

# District of Columbia Code

1961 EDITION ☆ SUPPLEMENT III

1964



TITLES 1-49

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TABLES AND INDEX







OFFICE OF LAW REVISION COUNSEL







# DISTRICT OF COLUMBIA CODE

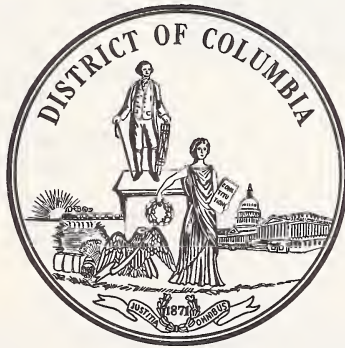
## 1961 EDITION

### SUPPLEMENT III

LAWS—January 3, 1961, to January 6, 1964

NOTES TO DECISIONS—January 1, 1961, to October 31, 1963

Prepared and Published Under Authority of Sections 202, 203 of Title 1, United States Code,  
by the Committee on the Judiciary of the House of Representatives



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1964



# UNITED STATES GOVERNMENT

OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

THE SECRETARY OF THE ARMY

GENERAL INVESTIGATION OF THE ARMY

IN THE MATTER OF THE ARMY





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UNDER WHOSE DIRECTION THIS  
EDITION HAS BEEN PREPARED

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# TITLES OF DISTRICT OF COLUMBIA CODE

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## PART I—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

Title	Title
1. Administration.	6. Health and Safety.
2. District Boards and Commissions.	7. Highways, Streets, Bridges.
3. Board of Public Welfare.	8. Parks and Playgrounds.
4. Police and Fire Departments.	9. Public Buildings and Grounds.
5. Building Restrictions and Regulations.	10. Weights, Measures, and Markets.

## PART II—JUDICIARY AND JUDICIAL PROCEDURE

Title	Title
11. Organization and Jurisdiction of the Courts.	15. Judgments and Executions—Fees and Costs.
12. Right to Remedy.	16. Particular Actions, Proceedings and Matters.
13. Procedure Generally.	17. Review.
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18. Decedents Estates and Their Distribution.	20. Administrators, Executors, and Collectors.
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## PREFACE

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This third supplement to the District of Columbia Code, containing the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia (except such laws as are of application in the District of Columbia by reason of being general and permanent laws of the United States), enacted during the first session of the Eighty-eighth Congress, has been prepared and published by the Committee on the Judiciary of the House of Representatives under authority of Sections 202, 203 of Title 1, United States Code. This supplement, together with the 1961 edition, contains the laws of the District of Columbia in force on January 6, 1964.

The 1961 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to October 31, 1963, in this supplement.

Particular attention of the users of this Code is directed to Part II, Judiciary and Judicial Procedure, consisting of Titles 11 to 17. These titles have been revised and enacted as law by Public Law 88-241, effective January 1, 1964.

The Committee gratefully acknowledges the assistance of Dr. Charles J. Zin, Law Revision Counsel, and Joseph Fischer, Esquire, Assistant Law Revision Counsel, of the Committee, and of all others who have helped in the preparation of this supplement.

The Committee again invites suggestions and criticisms by users of the Code.



*Chairman, Committee on the Judiciary*



*Chairman, Subcommittee No. 3  
Committee on the Judiciary*

WASHINGTON, D.C.  
January 6, 1964





# CONSTITUTION OF THE UNITED STATES OF AMERICA

## ARTICLE [XXIII]

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

### PROPOSAL AND RATIFICATION

This amendment was proposed by the Eighty-sixth Congress on June 16, 1960 and was declared by the Administrator of General Services on Apr. 3, 1961, to have been ratified.

The amendment was ratified by the following States: Hawaii, June 23, 1960; Massachusetts, Aug. 22, 1960; New Jersey, Dec. 19, 1960; New York, Jan. 17, 1961; California, Jan. 19, 1961; Oregon, Jan. 27, 1961; Maryland, Jan. 30, 1961; Idaho, Jan. 31, 1961; Maine, Jan. 31, 1961; Minnesota, Jan. 31, 1961; New Mexico, Feb. 1, 1961; Nevada, Feb. 2, 1961; Montana, Feb. 6, 1961; Colorado, Feb. 8, 1961; Washington, Feb. 9, 1961; West Virginia, Feb. 9, 1961; Alaska, Feb. 10, 1961; Wyoming, Feb. 13, 1961; South

Dakota, Feb. 14, 1961; Delaware, Feb. 20, 1961; Utah, Feb. 21, 1961; Wisconsin, Feb. 21, 1961; Pennsylvania, Feb. 28, 1961; Indiana, Mar. 3, 1961; North Dakota, Mar. 3, 1961; Tennessee, Mar. 6, 1961; Michigan, Mar. 8, 1961; Connecticut, Mar. 9, 1961; Arizona, Mar. 10, 1961; Illinois, Mar. 14, 1961; Nebraska, Mar. 15, 1961; Vermont, Mar. 15, 1961; Iowa, Mar. 16, 1961; Missouri, Mar. 20, 1961; Oklahoma, Mar. 21, 1961; Rhode Island, Mar. 22, 1961; Kansas, Mar. 29, 1961; Ohio, Mar. 29, 1961, and New Hampshire, Mar. 30, 1961.

### CERTIFICATION OF VALIDITY

Publication of the certifying statement of the Administrator of General Services that the Amendment had become valid was made on Apr. 3, 1961, F.R. Doc. 61-3017, 26 F.R. 2808.





DISTRICT OF COLUMBIA CODE  
1961 Edition

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SUPPLEMENT III

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LAWS—January 3, 1961, to January 6, 1964  
NOTES TO DECISIONS—January 1, 1961, to  
October 31, 1963



# THE CODE OF THE DISTRICT OF COLUMBIA

## PART I

### GOVERNMENT OF DISTRICT

[Judiciary Excepted]

TITLE 1—ADMINISTRATION.  
TITLE 2—DISTRICT BOARDS AND COMMISSIONS.  
TITLE 3—BOARD OF PUBLIC WELFARE.  
TITLE 4—POLICE AND FIRE DEPARTMENTS.  
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.

TITLE 6—HEALTH AND SAFETY.  
TITLE 7—HIGHWAYS, STREETS, BRIDGES.  
TITLE 8—PARKS AND PLAYGROUNDS.  
TITLE 9—PUBLIC BUILDINGS AND GROUNDS.  
TITLE 10—WEIGHTS, MEASURES, AND MARKETS.

### TITLE 1.—ADMINISTRATION

#### Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.  
1-224b. Regulations for the keeping and running at large of dogs.

§ 1-224. Police regulations authorized in certain cases.

\* \* \* \* \*  
Seventh. To regulate the keeping of dogs and fowls.

\* \* \* \* \*  
(As amended Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 3.)

#### AMENDMENT

1961—Section 3 of act Sept. 13, 1961, amended paragraph "Seventh" of the section by striking out the words "and running at large", so that the paragraph now reads, "To regulate the keeping of dogs and fowls."

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this Amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

#### CROSS REFERENCE

For Commissioners' authority to make regulations regarding dogs, see section 1-224b in this supplement.

§ 1-224b. Regulations for the keeping and running at large of dogs.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in section 1-224a. (Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 1.)

#### EFFECTIVE DATE

Section 4 of act Sept. 13, 1961, makes this section "effective thirty days after the date of its approval" [Sept. 13, 1961].

#### CROSS REFERENCES

For other provisions relating to keeping and handling of dogs, see sections 1-230, 22-1111, 47-2003, and 47-2004.

§ 1-226. Regulations for protection of life, health, and property.

#### NOTES TO DECISIONS

##### 3.50. Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al. v. The District of Columbia* (1963, 212 F. Supp. 438).

§ 1-228. Building regulations.

#### NOTES TO DECISIONS

##### 5.50. Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al. v. The District of Columbia* (1963, 212 F. Supp. 438).

§ 1-243. Rent for quarters.

#### TERM OF LEASE

##### REPEATED

1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 12.

Section 12 of the District of Columbia Appropriations Act, Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, provided that: "Appropriations in this Act shall be available when authorized by the Commissioners, for the rental of quarters without reference to section 6 of the District of Columbia Appropriation Act, 1945."

§ 1-263. Advancement of moneys by disbursing officer.

The disbursing officials designated by the Commissioners are authorized to advance to such officials as may be approved by the Commissioners such amounts and for such purposes as the Commissioners may determine. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 7.)



## SIMILAR PROVISIONS

1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 7.

1962—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, § 7.

Section was enacted as part of the District of Columbia Appropriation Act 1962, act Sept. 21, 1961. Similar provisions are contained in appropriation act Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 7. For other similar provisions see main volume of the Code.

### Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

#### § 1-311. Compensation of injured employees.

## CODIFICATION

Act Oct. 3, 1961, 75 Stat. 751, Pub. L. 87-339, amended section 104 of the Federal Employees Compensation Act Amendments of 1960 [act Sept. 13, 1960, 74 Stat. 906, Pub. L. 86-767] by inserting into the first proviso the following: “, except that this section shall apply to employees of the government of the District of Columbia other than members of the police and fire departments who are pensioned or pensionable under the provisions of the Policemen and Firemen's Retirement and Disability Act.” [§§ 4-521 to 4-538].

Section 104 of the Federal Employees Compensation Act Amendments of 1960, is set out as a note to 5 U.S.C. 790.

### Chapter 4.—COMMISSIONERS OF DEEDS

Sec.

1-401. Repealed.

1-402. Omitted.

#### § 1-401. Repealed. Sept. 25, 1962, 76 Stat. 594, Pub. L. 87-694, § 1.

Section of act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 557, related to the appointment of commissioners of deeds, by the President of the United States.

#### § 1-402. Omitted.

## AMENDMENT

Section 2 of act Sept. 25, 1962, Pub. L. 87-694, 76 Stat. 594, amended act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559, which was this section, by striking the words “commissioners of deed and” making the section no longer applicable to commissioners of deeds, and since section 1-401 was repealed by section 1 of the same act, it is omitted. The same section of act Mar. 3, 1901, relating to notaries public is set out as § 1-502.

### Chapter 5.—NOTARIES PUBLIC

#### § 1-502. Tenure of office.

## AMENDMENT

1962—Section 2 of act Sept. 25, 1962, Pub. L. 87-694, 76 Stat. 594, amended section by striking the words “commissioners of deeds and”. See note to section 1-402. Sections 1-402 and 1-502 were both based on act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.

### Chapter 7.—INSPECTION—REGULATORY PROVISIONS

#### § 1-719. Electric wiring—Inspection—Rules and regulations—Fees.

## NOTES TO DECISIONS

Judicial notice 1  
Record on appeal 2

#### 1. Judicial notice

Judicial notice would not be taken that incompetent repairman might injure or kill telephone user by connecting television lead-in to high voltage in television set. *R. A. Harris et al. v. W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

In view of electrical contractor's denial that incompetent repairman could cause injury by running of television lead-in wires and telephone wires in same conduit

such hazard must be established by competent evidence before Board of Appeals and Review. *Id.*

#### 2. Record on appeal

Review by district court of order of District of Columbia Board of Appeals and Review directing electrical contractor to remove lead-in wires for master television system from conduits already containing telephone wires should have consisted of full hearing upon record of proceedings before Board and summary judgment should not have been granted against contractor. *R. A. Harris et al. v. W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

### Chapter 8.—CONTRACTS

#### § 1-804. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.

## NOTES TO DECISIONS

Construction 3  
Liability under prime contractor's bond 6  
Limitation on intervention 7

#### 3. Construction

Statute regarding furnishing of contractor's payment bond for any public building is to be liberally construed in favor of those who contribute labor or materials for public works. *Humphreys & Harding, Inc. et ano. v. District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

#### 6. Liability under prime contractor's bond

Under statute requiring contractor for public building to give a contractor's payment bond to pay all persons supplying labor or materials, contractor, which placed verbal order for pilings with lumber company, which had plaintiff creosote pilings as required by contract, was liable when lumber company failed to pay plaintiff fully for creosote work. *Humphreys & Harding, Inc. et ano. v. District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

Under statute regarding the furnishing of a contractor's payment bond for construction of any public building, it is not necessary that a supplier of materials have any contractual relationship with the prime contractor. *Id.*

#### 7. Limitation on intervention

For purposes of District of Columbia statute providing that suit instituted by creditors on bond of contractor with district must be commenced within one year after performance and “final settlement” of contract, “final settlement” occurred not when Director of Department of Buildings and Grounds of district accepted all work performed under contract but rather subsequently when he approved final voucher for payment owing contractor. *District of Columbia etc. v. B. F. Rodney Co. et ano.* (1963, 219 F. Supp. 192).

### Chapter 9.—CLAIMS AGAINST DISTRICT

#### § 1-922. Negligent operation of vehicles by employees—Defense of governmental immunity—Exception.

## NOTES TO DECISIONS

Constitutionality 1  
Construction 2  
Reasonableness of legislation 3

#### 1. Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionality deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

Claims of unconstitutionality of statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and



providing instead for an action against the District, were insubstantial, and did not require the convening of a three-judge court to dispose of them. *R. J. Rohrlack v. T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

### 2. Construction

District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. *R. L. Gibbs v. District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 891).

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

### 3. Reasonableness of legislation

Statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead an action against the District, but limiting the liability of the District for acts committed in emergency vehicles during emergency runs to acts of gross negligence, constituted a reasonable exercise of police power. *R. J. Rohrlack v. T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

Due process prevents only such retroactive legislation as is unreasonable and fact that positions held before enactment of legislation are adversely affected by it does not render such legislation per se unreasonable. *Id.*

Retrospective application of statute immunizing District of Columbia policemen from liability for act performed within the scope of their employment resulting in dismissal of action against policeman who had been involved in automobile collision, was not unreasonable where there was no claim that plaintiff's conduct would have been different if immunity rule had been known or change foreseen at time of accident. *Id.*

## § 1-925. Action against District employees barred for negligent operation of vehicles—Exception.

### NOTES TO DECISIONS

#### Constitutionality 1 Construction 2

#### 1. Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionally deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

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District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

## Chapter 11.—ELECTIONS

### Sec.

- 1-1101. Election of electors of President and Vice President, and officials of political parties.
- 1-1106. Board independent agency—District to furnish facilities to Board—Seal.
- 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.
- 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.
- 1-1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

## § 1-1101. Election of electors of President and Vice President, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

- (1) National committeemen and national committee women;
- (2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;
- (3) Alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and
- (4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(1).)

### AMENDMENTS

1961—Section 1(1), act Oct. 4, 1961, amended the section by inserting at the beginning thereof the words: "In the District of Columbia electors of President and Vice President of the United States and".

Section 1(25), act Oct. 4, 1961, amended the title of the chapter to read as follows: "An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes."

### APPLICABILITY OF FEDERAL VOTING ASSISTANCE ACT

Section 2(c), act Oct. 4, 1961, provided that: "For the purposes of the Federal Voting Assistance Act of 1955,



the word "State" shall be deemed to include the District of Columbia." This act is set out in 5 U.S.C. 2171 et seq.

#### CROSS REFERENCES

For definition of "State" and executives of each State as including the District of Columbia and its Board of Commissioners, see 1 U.S.C. 21.

For provisions of constitutional amendment [Articles XXIII] granting the District of Columbia authority to appoint electors of President and Vice President see page xi in this supplement.

#### § 1-1102. Definitions.

For the purposes of this chapter—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United States (a) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election; (b) who is, or will be on the day of the next election, twenty-one year old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1-1103. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(26).)

#### AMENDMENT

1961—Section 1(26), act Oct. 4, 1961, amended clause (a) of par. (2) of the section to read as above set out. The wording of the clause before this amendment is set out in the main volume of the Code.

#### § 1-1103. Board of elections—Terms of office.

#### AMENDMENT

1961—Section 1(2), act Oct. 4, 1961, Pub. L. 87-389, amended the section by inserting at the end thereof the following sentence: "The said Commissioners shall from time to time designate the Chairman of the Board."

#### § 1-1105. Functions and authority of Board.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) conduct registrations and elections;

(3) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a copy of the official ballot to be used in any such election;

(4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons;

(5) operate polling places;

(6) develop and administer procedures for absentee registration for and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), (3), or (4) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [5 U.S.C. 2171].

(7) certify nominees and the results of elections; and

(8) perform such other duties as are imposed upon it by this chapter.

(b) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to sections 1-1107 and 1-1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(c) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter.

(d) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioners of the District of Columbia, without reference to the provisions of the Classification Act of 1949, as amended. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1 (3), (4), (5), (6).)

#### REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (d), is classified to U.S. Code, Title 5, chapter 21.

#### AMENDMENTS

1961—Section 1(3), act Oct. 4, 1961, amended par. (1) of subsection (a) by striking out, "permanent".

Section 1(4), of same act, amended par. (3) of subsection (a) to read as above set out. The original wording of par. (3) is set out in the main volume of the Code.

Section 1(5) of the same act, amended the first sentence of subsection (b) by striking the words: "the Board, and persons authorized by it" and inserting in lieu thereof the words: "Each member of the Board and persons authorized by the Board" and by striking the period at the end of subsection (c) and inserting the following: ", including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Section 1(6) of the same act renumbered pars. (6) and (7) of subsection (a) as pars. (7) and (8) and inserted a new par. (6) as above set out.

#### § 1-1106. Board independent agency—District to furnish facilities to Board—Seal.

\* \* \* \* \*

(c) Subject to the approval of the Commissioners of the District of Columbia, the Board is authorized to adopt and use a seal. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(7).)

#### AMENDMENT

1961—Section 1(7), act Oct. 4, 1961, amended the section by adding subsection (c) thereto.

#### § 1-1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.

(a) A person shall be entitled to vote in an election in the District of Columbia only if he is a qualified elector and, except as provided in subsection (e) of



this section, he registers in the District during the year in which such election is to be held.

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in section 1-1102(2) for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 1-1105, and, if he desires to vote in a party election, such form shall show his political party affiliation.

(c) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration affidavit form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(d) The registry shall be open from January 1 until forty-five days before the first Tuesday following the first Monday in November during each presidential election year except the forty-five day period which ends on the first Tuesday in May, and except as provided by the Board in the case of a special election. The Board may close the registry on Saturdays, Sundays and holidays. While the registry is open, any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may cast a ballot marked "challenged", as provided in section 1-1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87-389, § 1(8, 9, 10, 11).)

#### AMENDMENTS

1961—Section 1(8), act Oct. 4, 1961, amended subsection (a) to read as above set out. The original wording of subsection (a) is set out in the main volume of the Code.

Section 1(9) of the same act, amended pars. (2) and (3) of subsection (b) to read as above set out. The original wording of former pars. (2) and (3) are set out in the main volume of the Code.

Section 1(10) of the same act, amended subsection (c) by striking "(b) (3)" and inserting in lieu thereof "(b) (2)".

Section 1(11) of the same act amended the first sentence of subsection (d) to read as above set out. The wording of the sentence prior to amendment is set out in the original Code.

§ 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.

(a) Candidates for office participating in an election of the officials referred to in clauses (1), (2), and (3) of section 1-1101 and of officials designated pursuant to clause (4) of such section shall be the persons registered under section 1-1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than thirty days before the date of the election; and

(2) signed by not less than one hundred voters, registered under section 1-1107, and of the same political party as the nominee.

(b) No such person shall hold elected office pursuant to this chapter unless he has been a bona fide resident of the District of Columbia continuously since the beginning of the three-year period ending on the date of the next election, and is a qualified elector registered under section 1-1107.

(c) The Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote for the candidates duly qualified and nominated for election by such party under this chapter; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election.

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections on or before September 1 next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.



(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 5 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before August 15 preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this chapter unless (1) he is a registered voter in the District and (2) he has been a bona fide resident of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the electoral college. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, 819, Pub. L. 87-389, § 1 (12, 13).)

#### AMENDMENT

1961—Section 1(12), act Oct. 4, 1961, amended the portion of subsection (a) which precedes par. (1) to read as above set out.

Section 1(13) of the same act, further amended the section by adding subsections (d), (e), (f) and (g) thereto.

#### § 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.

(a) Voting in all elections shall be secret.

(b) The vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his registration is located. The Board shall by regulation permit voting for electors of President and Vice President by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.

(c) \* \* \*

(d) \* \* \*

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be stricken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) \* \* \*

(g) No person shall vote more than once in any election, nor shall any person vote in an election

held by a political party other than that of which he has declared himself a member.

(h) \* \* \*

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(14, 15, 16, 17).)

#### CHANGE OF NAME

Act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 87-883, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia to "District of Columbia Court of Appeals."

#### AMENDMENTS

1961—Section 1(14), act Oct. 4, 1961, struck out the second sentence in subsection (a). The struck sentence read as follows: "Voting may be by paper ballot or voting machine."

Section 1(15) of the same act, amended subsection (b) by striking the word "ballot" and inserting in lieu thereof the word "vote" in the first sentence and by inserting at the end thereof the new sentence as above set out.

Section 1(16) of the same act amended subsection (e) by changing "municipal court of the District" to read "municipal court for the District".

Section 1(17) of the same act, amended subsection (g) to read as above set out. The original wording of subsection (g) is set out in the main volume of the Code.

#### § 1-1110. Dates for holding elections—Voting Hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

(a)(1) The elections of the officials referred to in clauses (1), (2), and (3) of section 1-1101 and of officials designated pursuant to clause (4) of such section shall be held on the first Tuesday in May of each presidential election year. Any such election shall be conducted by the Board in conformity with the provisions of this chapter. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election days.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election day. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(b) Candidates receiving the highest number of votes in such elections shall be declared the winners.

(c) In the case of a tie, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following the election, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.



(d) In the event that any official elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee: *Provided*, That such successor shall have the qualifications required by this Act for such office. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(18, 19, 20).)

#### AMENDMENTS

1961—Section 1(18), act Oct. 4, 1961, amended subsection (a) by inserting the number (1) immediately after (a) and by the matter set out as par. (2) in said subsection.

Section 1(19) of the same act amended subsection (b) by changing "said election" to read "such elections."

Section 1(20) of the same act amended subsection (d) by striking the word "dies" and inserting in lieu thereof "dies, resigns, or becomes unable to serve" and by striking the words "local committee" at the end of the subsection and inserting in lieu thereof "party committee: *Provided*, That such successor shall have the qualifications required by this chapter for such office."

#### CROSS REFERENCE

Sale of alcoholic beverages on election days, see § 25-107.

§ 1-1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.

(a) There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to carry out the purposes of this chapter.

(b) Subject to the penalties provided in this chapter, a candidate for elector of President and Vice President, national committeeman, national committeewoman, delegate, or alternate, in his campaign for election, shall not make expenditures in excess of \$2,500.

(c) No independent committee or party committee shall receive contributions aggregating more than \$100,000, or make expenditures aggregating more than \$100,000 for any campaign covered by this chapter.

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of \$5,000 in connection with any campaign for election of any elector, national committeeman, national committeewoman, delegate, or alternate.

(e) Every candidate and independent committee or party committee shall, within ten days after an election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (Aug. 12, 1955, 69 Stat.

704, ch. 862, § 13; Oct. 14, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(21, 22, 23).)

#### AMENDMENTS

1961—Section 1(21), act Oct. 4, 1961, amended subsection (b) by inserting after the words "a candidate for" the words, "elector of President and Vice President,".

Section 1(22) of the same act amended subsection (d) by striking "any national committeeman" and inserting in lieu thereof "any elector, national committeeman".

Section 1(23) of the same act, amended subsection (e) by striking from the first sentence the words "the election" and inserting in lieu thereof "an election".

§ 1-1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his place of residence or his voting privilege in any other part of the United States, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than \$500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24).)

#### AMENDMENT

1961—Section 1(24), act Oct. 4, 1961, amended the section by striking from the first sentence "if employed in the counting of votes in such elections" and inserting in lieu thereof "if employed in the counting of votes in any election held pursuant to this chapter knowingly" and by inserting the word "knowingly" before the words "make any expenditure".

### Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

#### SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

Sec.

1-1410a. Consent of Congress given to make certain amendments to mass transportation compact.

#### SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

§ 1-1407. Functions, duties, and powers.

(a) \* \* \*

\* \* \* \* \*

(11) Repealed October 4, 1961, 75 Stat. 787, Pub. L. 87-367, § 103(4).

#### SAVINGS PROVISIONS

Section 104 of act Oct. 4, 1961, Pub. L. 87-367, provided: "(a) The changes in existing law made by section \* \* \* 103 of this title [Repealing subsection (a) (11)] shall not



affect any position existing immediately prior to the effective date of such changes in existing law, the compensation attached to such position, and any incumbent thereof, his appointment thereto, and his entitlement to receive the compensation attached thereto, until appropriate action is taken in accordance with this title.

"(b) Positions in grades 16, 17, or 18, as the case may be, of the General Schedule of the Classification Act of 1949, as amended, immediately prior to the effective date of this section [Oct. 4, 1961], shall remain, on and after such effective date, in their respective grades, until appropriate action is taken under section 505 of the Classification Act of 1949 as in effect on and after such effective date."

## SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

### NOTES TO DECISIONS

#### 1. Authority of Commission

Washington Metropolitan Area Transit Commission, to which carrier applied for certificate while making simultaneous motion to dismiss on ground that its operation was exempt from regulation, could not, upon determining that operation was not exempt, grant motion and thus compel carrier to pursue application, since carrier might not wish to seek regulated operation. *Montgomery Charter Service Inc. v. The Washington Metropolitan Area Transit Commission et al.* (1962, 302 F. 2d 906, 112 U.S. App. D.C. 321).

Washington Metropolitan Area Transit Commission could not order carrier, which was applying for certificate, to cease unauthorized operations, absent evidence in record that carrier was engaged in such operations, although record contained reference to claimed admission by carrier's president and counsel. *Id.*

§ 1-1410a. Consent of Congress given to make certain amendments to mass transportation compact.

The consent of Congress is hereby given to the State of Maryland and the Commonwealth of Virginia to effectuate the foregoing <sup>1</sup> amendments to the compact, and the Commissioners of the District of Columbia are authorized and directed to effectuate said amendments on behalf of the United States for the District of Columbia. (Oct. 9, 1962, 76 Stat. 765, Pub. L. 87-767, § 1.)

### CONGRESSIONAL RESERVATION

Section 3, act of Oct. 9, 1962, Pub. L. 87-767, provides as follows: "The right of Congress to alter, amend, or repeal this Act is hereby expressly reserved."

### PREAMBLE TO ACT OCT. 9, 1962, PUB. L. 87-767.

Whereas the State of Maryland and the Commonwealth of Virginia have entered into a compact, known as the Washington Metropolitan Area Transit Regulation Compact, hereinafter called compact, creating the Washington Metropolitan Area Transit Commission, hereinafter called Commission; and

Whereas Congress, by Public Law 86-794 (74 Stat. 1031) [§ 1-1410], consented to the entry into the compact by the State of Maryland and the Commonwealth of Virginia, and authorized and directed the Board of Commissioners of the District of Columbia to enter into and execute the compact on behalf of the United States for the District of Columbia; and

Whereas the Commission has recommended specific amendments to the compact, to wit:

(1) To include within the Washington metropolitan area transit district the Dulles International Airport and all cities which lie within the metropolitan district;

(2) To exempt from the Commission's jurisdiction transportation performed by a carrier whose only transportation is between points outside the metropolitan district and points inside the metropolitan district;

(3) To clarify the Commission's jurisdiction over interstate taxicab operations;

(4) To provide that the annual reports of the Commission be submitted on a fiscal year basis; and Whereas the State of Maryland and the Commonwealth of Virginia have by legislation (chapter 114, Acts of Maryland General Assembly, 1962; and chapter 67, Acts of Virginia General Assembly, 1962) adopted identical amendments to the compact, to become effective upon consent of Congress, by which article I, and sections 1 and 24 of article XII, respectively, of the compact are amended to read as follows: [*Amendments To Compact Authorized By Act Oct. 9, 1962.*]

### ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the other boundaries of the combined area of said counties, cities and airport.

### ARTICLE XII

#### Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

(1) transportation by water;

(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier by railroad subject to Part I of the Interstate Commerce Act, as amended.

(b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing a bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (1) the rate or charges for transportation from one signatory to

<sup>1</sup> The amendments are set out as a note to this section.

another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

Annual Report of the Commisison

24. The Commission shall make an annual report for each fiscal year ending June thirtieth, to the Governor of Virginia and the Governor of Maryland, and to the Board of Commissioners of the District of Columbia as soon as practicable after June thirtieth, but no later than the 1st day of January of each year, which shall contain, in addition to a report of the work performed under this Act, such other information and recommendations con-

cerning passenger transportation within the Metropolitan District, as the Commission deems advisable.

§ 1-1414. Repealed. Oct. 5, 1962, 76 Stat. 765. Pub. L. 87-767, § 2.

Section act Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86-794, § 5, provided that the consent of Congress to the mass transportation compact was conditioned on section 1(a)(4) of article XII of the compact being amended, in the respects therein specified, within three years from Sept. 15, 1960. See amendments to compact set out as a note to § 1-1410a.



## TITLE 1.—ADMINISTRATION, APPENDIX

### REORGANIZATION PLAN AND ORDERS FOR DISTRICT OF COLUMBIA

#### REORGANIZATION ORDER NO. 2.—CITIZENS' ADVISORY COUNCIL

[Amended and redesignated as Org. Ord. No. 136.]

##### REORGANIZATION PLAN NO. 5 OF 1952

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 1, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949. [Reorganization Act of 1949, 63 Stat. 203 as amended, is set forth in sections 133z to 133z-15 of Title 5, United States Code.]

##### GOVERNMENT OF THE DISTRICT OF COLUMBIA

(b) The Board of Commissioners shall not provide for the performance by any member of the Board of Commissioners, or by any other officer, employee, or agency of: (1) any function vested in the said Board by Act of Congress with respect to making and adopting regulations except those pertaining to the administration of or procedure before any agency of the Government of the District of Columbia; (2) the function of approving any contract in excess of \$50,000; (3) the function of appointing or removing the head of any agency responsible directly to the Board of Commissioners; or (4) the function of approving the budget for the District of Columbia.

(Subsec. (b) amended by Act Oct. 11, 1962, 76 Stat. 910, Pub. L. 87-802, § 1, by striking \$25,000 and inserting in lieu \$50,000.)

#### REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE

Reorg. Ord. No. 8, C.O. 302,970.a, Sept. 25, 1952, as amended Aug. 24, 1961, ordered that:

1. \* \* \*

(c) The Management Office is responsible for planning, developing, directing, and coordinating a program for the effective use of automatic data processing systems and equipment throughout the entire District of Columbia Government.

#### REORGANIZATION ORDER NO. 19.—INTERNAL AUDIT OFFICE

Reorg. Ord. No. 19, C.O. 302,970D, C.O. 302,853/14, Nov. 10, 1952, as amended Aug. 28, 1958, and June 5, 1962, ordered that:

\* \* \*

##### PART IV

*Functions.*—The responsibilities of the Internal Audit shall be to:

1-6. \* \* \*

7. Acting for the Director of General Administration, coordinates with District departments concerned, all audit reports submitted by the General Accounting Office in their review of District Government activities.

#### REORGANIZATION ORDER NO. 28.—DEPARTMENT OF SANITARY ENGINEERING

Reorg. Ord. No. 28, C.O. 302,970.H, C.O. 302,853/14, Apr. 3, 1953, as amended Aug. 4, 1953, Jan. 31, 1956, Jan. 17, 1961, Oct. 17, 1961, and Nov. 27, 1962, ordered that:

\* \* \*

##### PART II

*Purpose.*—\* \* \*

\* \* \*

Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Depart-

ment, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial, and other related services.

\* \* \*

##### PART IV

*Functions.*—A. *Office of the Director, Department of Sanitary Engineering:*

\* \* \*

6. Orders all construction projects involving both assessable and non-assessable facilities within the framework of the programs for which he is responsible to the Commissioners.

#### REORGANIZATION ORDER NO. 29.—PROCUREMENT OFFICE

Reorg. Ord. No. 29, C.O. 302, 970.I, & C.O. 302,853/14, Apr. 14, 1953, as amended June 4, 1953, Sept. 17, 1953, Feb. 2, 1954, June 1, 1954, Mar. 27, 1956, Oct. 30, 1956, June 24, 1958, Dec. 22, 1958, July 28, 1959, July 12, 1960, Mar. 9, 1961, Oct. 30, 1962, Feb. 8, 1963, Mar. 13, 1963, and Mar. 26, 1963, ordered that:

\* \* \*

##### PART VI

*Appointment of contracting officers.*—

\* \* \*

(b) The employees occupying the following positions are appointed Alternate Contracting Officers, and each is authorized to exercise all the powers vested by paragraph (c) of this Part in the Contracting Officer for whom he is named Alternate, subject to all limitations upon the powers of such Contracting Officer, during the unavailability of such Contracting Officer and at such times and for such purposes as such Contracting Officer may designate in writing and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed:

(1) Deputy Director of Buildings and Grounds, and Chief, Office of Design and Engineering, as Alternates for Director of Buildings and Grounds, D.C., but said Chief, Office of Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Buildings and Grounds and then only as specifically designated in writing.

(2) Deputy Director of Highways and Traffic, and Deputy Director of Design, Engineering and Research as alternates for Director of Highways and Traffic, but said Deputy Director for Design, Engineering and Research shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Highways and Traffic and then only as specifically designated in writing.

(3) Deputy Director of Sanitary Engineering, and Superintendent, Office of Planning, Design and Engineering as alternates for Director of Sanitary Engineering, D.C., but said Superintendent, Office of Planning, Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Sanitary Engineering and then only as specifically designated in writing.

(4) Assistant Chief, Real Property Division as alternate for the Chief, Real Property Division, Administrative Services Office.

##### PART VII

*Contract Appeals Board, D.C.*—

\* \* \*

(b) The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and

appeals from actions by Contracting Officers, including the Procurement Officer, where the contracting officer is unable to satisfy the contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Board of Commissioners may from time to time order. Upon request of the contractor or of the contracting officer, and with the consent of the other, the subject matter of an appeal shall be remanded to the contracting officer who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to the limitations of Section 3(b) (2) of Reorganization Plan No. 5 of 1952.

Order No. 2070, dated Oct. 30, 1962, makes the following amendments:

- 1. The figures \$25,000 are changed to \$50,000 in Part IV(b) (1), Part V(b) and Part VI(c) (1).
- 2. The figures \$5,000 are changed to \$10,000 in Part IV(b) (2) and Part VI(c) (2).

REORGANIZATION ORDER NO. 31.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Reorg. Ord. No. 31, C.O. 274,993, C.O. 302,853/14, C.O. 302,970.C, P.D. 01.9542, Apr. 30, 1953, as amended July 20, 1954, June 28, 1955, Sept. 5, 1957, Nov. 22, 1960, and June 21, 1962, ordered that:

PART IX

In making such findings of fact the Board shall consider the written opinion submitted to it by the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter before the Police and Firemen's Retirement and Relief Board.

The authority set forth in subsection "(i)" of the Policemen and Firemen's Retirement and Disability Act (P.L. 85-157; sec. 4-529, D.C. Code, 1961 ed.) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

REORGANIZATION ORDER NO. 34.—DEPARTMENT OF CORRECTIONS

Reorg. Ord. No. 34, C.O. 302,089, C.O. 302,853/14, May 28, 1953, as amended Dec. 10, 1953, Aug. 12, 1954, May 17, 1956, July 14, 1960, May 4, 1961, and Apr. 18, 1963, ordered that:

PART IV

K. *Health Division.*—Provides for the operation of a public health program for the inmates confined in the institutions, including provision for their medical, dental, and nursing care. Insures that the medical, dental, and nursing programs of the Department of Corrections are in conformance with the overall public health programs of the Department of Public Health, as far as practicable in a prison system.

L. *Personnel Division.*—Plans, directs, coordinates, and administers, under established administrative and penological policies, a comprehensive program of personnel operations and activities for all employees of the Department.

M. *Youth Center Division.*—Operate an institution for the detention of male prisoners committed under the Federal Youth Corrections Act, and for other male prisoners sentenced under other penalty provisions, who are considered by the Director of the Department of Corrections to be suitable for confinement therein, and for such other offenders as may be committed by the Courts for diagnosis and study, prior to further Court action, including provision for custody, diagnostic study, rehabilitation, care, discipline and instruction of such persons.

REORGANIZATION ORDER NO. 35.—ALCOHOLIC BEVERAGE CONTROL BOARD

Reorg. Ord. No. 35, G.F. 25-100, C.O. 302,853/14, June 16, 1953, ordered that:

PART I

Alcoholic Beverage Control Board.—A. There is established, under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members who shall be appointed by the Board of Commissioners, and which shall be headed by a Chairman designated by the Board of Commissioners from among the three members. All appointments shall be for terms of four years, except such appointments as may be made for the remainder of unexpired terms. A quorum shall consist of any two members. Each member of the Alcoholic Beverage Control Board shall be of good moral character, shall have resided in the District of Columbia for at least three years immediately preceding his appointment, and shall maintain residence in the District of Columbia during the term for which he was appointed. At least one member of the Board shall be a member of the bar of the United States District Court for the District of Columbia. No person shall be appointed as a member of such Board who at any time during the two-year period immediately preceding such appointment was an employee of such Board.

REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT

Reorg. Ord. No. 38, L. S. 3089-B, June 18, 1953, as amended Aug. 27, 1957, and Oct. 17, 1961, ordered that:

PART I

Fire Department.—A. \* \* \*

4. Operation and maintenance of special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services, except Fire Alarm Headquarters which is operated and maintained by the Department of Buildings and Grounds pursuant to Reorganization Order No. 42, as amended.

REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

Reorg. Ord. No. 42, L. S. 4159-B, June 23, 1953, as amended Aug. 11, 1954, Nov. 23, 1954, Jan. 31, 1956, Apr. 24, 1956, Feb. 7, 1961, Oct. 17, 1961, and Jan. 3, 1963, ordered that:

PART III

Organization.—

6. Buildings Management Division.

PART IV

F. *Buildings Management Division:*

1. Operates and maintains the following District Government buildings and facilities, including the maintenance of adjacent grounds under the jurisdiction of the District of Columbia Government, and the providing of necessary protective, elevator, custodial, and other related services:

Name of building	Multiple-use	Special-use
1. Barret School-----	-----	X
2. Comfort Station No. 2-----	-----	X
3. Comfort Station No. 3-----	-----	X
4. Corcoran School-----	-----	X
5. D.C. Morgue-----	-----	X
6. District Building-----	X	-----
7. East Administration Building-----	X	-----
8. Fire Alarm Headquarters---	-----	X
9. Force School Building-----	X	-----
10. Ford Building-----	X	-----
11. Juvenile Court-----	-----	X



<i>Name of building</i>	<i>Multiple-use</i>	<i>Special-use</i>
12. May Building-----	X	-----
13. Municipal Court (Civil Division)-----	-----	X
14. Municipal Court (Criminal Div.)-----	-----	X
15. National Guard Armory <sup>1</sup> -----	X	-----
16. New Cent. Library (499 Pennsylvania Avenue)-----	X	-----
17. Recorder of Deeds-----	-----	X
18. Southwest Health Center-----	-----	X
19. Warehouse (22 Adams Place, NE.)-----	<sup>2</sup> X	-----
20. 450 Main Avenue, SW.-----	-----	X

<sup>1</sup> Limited to the performance of maintenance and repair activities pursuant to the provisions of the act approved June 4, 1948, 62 Stat. 339; section 2-1703, D.C. Code, 1951.

<sup>2</sup> Operates and maintains the Warehouse, Shops, and Records Center facilities at 22 Adams Place, NE., on a reimbursable basis for such part of said facilities for which funds are not allotted to the Department of Buildings and grounds.

#### REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorg. Ord. No. 43, G. F. No. 36-000, June 23, 1953, as amended Aug. 28, 1962, ordered that:

##### PART VIII

There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189; sec. 35-204, D.C. Code, 1961 ed.), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files (except as set forth in paragraph 2 of this Part) of such companies.

2. The function delegated by paragraph 1 of this Part does not include authority to approve or permit the removal from the District of the principal office or stock records of any domestic life insurance company organized or reincorporated under the provisions of the 1934 Life Insurance Act (June 19, 1934, 48 Stat. 1143, ch. 672).

3. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

#### REORGANIZATION ORDER NO. 46.—METROPOLITAN POLICE DEPARTMENT

Reorg. Ord. No. 46, L.S. 4236-B, June 26, 1953, as amended May 17, 1955, Oct. 20, 1955, Jan. 31, 1956, Oct. 17, 1961, Feb. 6, 1962, and Apr. 6, 1962, ordered that:

##### PART III

*Organization.*— \* \* \*

12. Internal Investigation Unit.

##### PART IV

*Functions.*—A. *Office of the Chief of Police.*

1-5. \* \* \*

6. Acts as the agent of the Director, Department of Motor Vehicles, for the service of notices suspending or revoking operators' permits and privileges and stamping on operators' permits issued by the District notations that such notices have been served.

H. *Chief Clerk's Section:*

1-3. \* \* \*

4. Prepares all statistical reports requested by the Federal Bureau of Investigation, National Safety Council, and other agencies.

J. *Special Services Section:*

1-5. \* \* \*

6. Deleted by order dated Apr. 6, 1962.

K. *Uniforms and Equipment Section:*

2. Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Depart-

ment, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services.

\* \* \* \* \*

##### L. *Internal Investigations Unit:*

As directed by the Chief of Police, advises, consults with, and provides investigative assistance to other units of the department on serious or complex personnel problems; investigates cases involving alleged violations of the law by members of the department, whether arising from reports made by officials and members of the department or from the complaints of other persons; investigates, or reviews investigations of cases involving infractions of the rules of discipline or other matters; makes critical examinations of all areas of police activities wherein may lie a threat to the integrity or morale of the department.

#### REORGANIZATION ORDER NO. 47.—BOARD OF POLICE AND FIRE SURGEONS

Reorg. Ord. No. 47, L.S. 4237-B, June 26, 1953, as amended Oct. 16, 1958, and June 21, 1962, ordered that:

##### PART I

*Board of Police and Fire Surgeons.*—A. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto: *Provided*, That in all cases involving retirement or involuntary separation from service pursuant to the Policemen and Firemen's Retirement and Disability Act (P.L. 85-157; sec. 4-526 through 4-529, D.C. Code, 1961 edition (subsection (f), Retirement for Disability Not Incurred in Line of Duty; subsection (g), Retirement for Disability Incurred While Performing Duty; subsection (h), Optional Retirement; and subsection (i), Involuntary Separation)), the duty of the Board of Police and Fire Surgeons shall be limited to that of submitting in writing to the Police and Firemen's Retirement and Relief Board its opinion concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, but any member of the Board of Police and Fire Surgeons, and any other person, whose report of the facts or examination of the member formed any part of the basis of such opinion of the Board of Police and Fire Surgeons shall, when so requested by any member of the Police and Firemen's Retirement and Relief Board, testify thereon before the Retirement and Relief Board with respect thereto and produce before such Board all the records and evidence before, or in the files of, the Board of Police and Fire Surgeons or any such other person concerning the member whose retirement or separation is sought, and such submission and all such records and evidence of the Board of Police and Fire Surgeons and of any such other person shall be considered by the Police and Firemen's Retirement and Relief Board: *Provided further*, That under the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952, as confirmed by the second sentence of subsection "(q)" of the Policemen and Firemen's Retirement and Disability Act, the authority lodged in the Board of Police and Fire Surgeons by subsection "(i)" of said Act and by virtue of Reorganization Order No. 47 prior to this amendment, to express a judgment as to the disability of a member from performing further duty in his department, is hereby withdrawn from said Board of Police and Fire Surgeons, and such authority is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board, established pursuant to Reorganization Order No. 31, as amended.

\* \* \* \* \*

#### REORGANIZATION ORDER NO. 49.—OFFICE OF CIVIL DEFENSE

Reorg. Ord. No. 49, G. F. No. 4-010, June 26, 1953, as amended November 10, 1953, Aug. 26, 1958, and Aug. 7, 1962, ordered that:

\* \* \* \* \*

##### PART III

\* \* \* \* \*

F. The Director of Civil Defense is hereby designated Emergency Planning Director for D.C.



# REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

Reorg. Ord. No. 55, L. S. 4263-B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, and Dec. 4, 1962, ordered that:

\* \* \* \* \*

## PART III

\* \* \* \* \*

### D. Inspection Division.

\* \* \* \* \*

9. Conducts inspections necessary to provide adequate safeguards to the public safety and health; evaluates the effectiveness of the existing regulations pertaining to minimizing the contaminants polluting the air and proposes changes in regulations deemed necessary to achieve the overall air pollution control objectives.

\* \* \* \* \*

### E. License and Permit Division.

\* \* \* \* \*

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be apprised of what has transpired prior to the appeals action, as well as the basis for the denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, suspending, or restoring the license, permit, or certificate, as the case may be.

# REORGANIZATION ORDER NO. 57.—DEPARTMENT OF PUBLIC HEALTH

Reorg. Ord. No. 57, L. S. 4262-B, June 30, 1953, as amended June 30, 1954, Nov. 30, 1954, Jan. 31, 1956, Aug. 23, 1956, Dec. 13, 1956, Nov. 12, 1957, Dec. 23, 1958, Nov. 10, 1960, Feb. 21, 1961, Nov. 2, 1961, Nov. 7, 1961, and June 20, 1963, ordered that:

\* \* \* \* \*

## PART III

\* \* \* \* \*

### A. Office of the Director.—

1. Develops and proposes major programs, policies, and regulations on health, sanitation, air pollution, disease control, hospital and clinic care, and vital statistics matters to the Board of Commissioners.

\* \* \* \* \*

14. Collaborates with the U.S. Public Health Service, D.C. departments, and other agencies in the Washington metropolitan area in performing research and in surveying and monitoring the air with the objective of developing and coordinating a long-range program designed to prevent such contamination of the air as endangers the health of persons, animals and plants. Coordinates all phases of air pollution within D.C. and assists in performing a similar role for the entire area. Reviews and analyzes the effectiveness of air pollution inspections and controls on motor vehicles, buildings, and open fires administered by other departments and proposes actions consistent with the program objectives. Prepares periodic reports on the effectiveness of air pollution controls toward attaining the established objectives. Keeps public informed on air pollution control matters.

15. Plans, organizes and directs the following public health education activities:

(a) Analyzes public health education needs in relation to the problems and resources available in the community selecting the most useful activity in each field of activity within the Department.

(b) Determines the educational approaches and application to current community needs, utilizing all available visual and audio methods.

(c) Provides leadership in the community for the educational activities of various health agencies and facilities in the interest of public health to eliminate overlapping and duplication and to stimulate activity.

(d) Provides guidance for in-service training of professional health workers in educational techniques of community health education.

(e) Demonstrates health education programs through pilot projects on special problems.

(f) Collaborates with departments of the District Government in increasing health oriented programs available to the general public (public schools, public welfare, vocational rehabilitation and recreation).

(g) Operates film library for official and community groups. Circulates pamphlets and professional journals within the Department.

(h) Produces are displays, posters and other material for reproduction purposes.

16. Pursuant to the provisions of the Act approved September 10, 1962 (Pub. Law 87-656; 76 Stat. 534), issues tissue bank licenses and administers regulations adopted under the authority of such Act.

17. After notice and hearing, denies, suspends, or revokes any tissue bank license applied for under the provisions of Public Law 87-656. All determinations relative to these matters may be appealed to the Board of Appeals and Review, and a statement to this effect shall be incorporated in all notices of unfavorable action sent to members of the public.

### B. Office of Administration.—

\* \* \* \* \*

### (c) Bio-Statistics Division.—

\* \* \* \* \*

1. Formulates, plans, and directs a centralized biostatistics and vital statistics program.

2. Collects, correlates, and analyzes morbidity and vital statistical data; prepares reports, charts, graphs, and other visual methods for keeping the Board of Commissioners, the Director of Public Health, constituent bureaus, and the community informed on activities of the Department and its health programs.

3. Conducts statistical studies and assists in research projects of the Department.

4. Maintains records of births and deaths, and issues certified copies of such records.

5. Issues permits for the removal, burial, cremation, disinterment, or reinterment of the bodies of persons deceased in the District of Columbia, or of deceased persons brought into or transported out of the District of Columbia.

\* \* \* \* \*

### H. Bureau of Environmental Health.—

1. Inspects licensed dairy farms and cattle thereon, milk plants, milk receiving stations and ice cream plants supplying milk and ice cream for human consumption in the District; examines slaughter houses and animals slaughtered for human consumption in the District; and collects samples of such items as are necessary for laboratory tests.

2. Inspects all types of food distribution establishments, food processing centers and food preparing or serving establishments, including the food proper, equipment and all items used in the distribution, processing, preparation or service of food, and the premises; collects samples and makes cultures for laboratory tests; examines animals for rabies and furnishes technical supervision over the program for the vaccination of dogs for the prevention of rabies.

3. Supervises ways and methods to assure adherence to proper standards of hygiene for occupations, work places, work material, work conditions, and related matters concerning city planning; heating, lighting, ventilation, aerial pollution, noise and public health nuisances related to vacant land, occupations and work places; and health hazards associated with work material and conditions.

4. Conducts sampling of gaseous contaminants in the air; notifies the public of impending or potential tem-



perature inversion periods; coordinates the air pollution study of damage to plants and prepares for the Director periodic reports encompassing the air pollution activities of all D.C. departments and agencies involved in this program.

5. Enforces from the standpoint of public health responsibilities the hygienic measures to be taken in such areas as the water supply, sewage disposal, collection and disposal of municipal wastes; bathing places, recreational areas and places of public assemblage; interstate carrier sanitation; controls industrial waste pollution of surface waters and water pollution. In connection with cross connections and plumbing defects encountered, where an immediate danger to the public health exists, takes emergency action necessary to prevent further exposure to the public to the health menace and immediately informs Department of Licenses and Inspections of full circumstances in the situation in order that the latter may secure correction of the deficiencies in accordance with applicable laws, codes and regulations.

6. Exercises leadership in public health preventive programs and corrective measures to control disease transmitted by insects, pests, vermin, and rodents in respect to the elimination of breeding places, eradication of the vector, and fumigation of materials and property. Upon request by the Department of Licenses and Inspections, undertakes or supervises proper fumigation or extermination measures in habitable premises.

7. Passes upon construction plans and alterations and performs pre-licensing inspections as required by regulation, except insofar as housing of all types is concerned.

8. Conducts educational classes in the public health aspects of environment, personal hygiene and food handling problems for industrial, environmental, management, and employee groups of the community.

#### REORGANIZATION ORDER NO. 58.—DEPARTMENT OF PUBLIC WELFARE

Reorg. Ord. No. 58, L.S. 4265-B, June 30, 1953, as amended July 31, 1953, Aug. 19, 1954, June 7, 1956, Sept. 25, 1956, June 6, 1957, Nov. 12, 1957, and Aug. 9, 1960, Oct. 20, 1960, Feb. 21, 1961, Nov. 29, 1962, and Feb. 26, 1963, ordered that:

##### PART IV

#### A. Office of the Director.—

Performs all the functions vested in the Commissioners by the District of Columbia Public Assistance Act of 1962, except the adoption and promulgation of regulations.

#### D. Public Assistance Division.—

3. Provides for the furnishing of medical services to persons found eligible for public assistance and, pursuant to the provisions of the Social Security Amendments of 1960 (74 Stat. 995), of medical assistance for the aged; administers programs authorized and otherwise provided for by and with District appropriations and other monies available or becoming available for such purposes, from whatever source received; and enters into such arrangements with other agencies of the District of Columbia as may be necessary to carry out such purposes.

4. Provides for the transportation of indigent veterans and indigent nonresidents of the District of Columbia to destinations approved by appropriate authority, and arranges for their food and shelter pending and during such transportation.

7. Administers the District of Columbia Public Assistance Act of 1962.

#### E. Child Welfare Division.—

9. Provides for the transportation of children under 18 years of age who are nonresidents of the District of Columbia to destinations approved by appropriate authority,

and arranges for their food and shelter pending and during such transportation.

#### PART VIII

*Effective date.*—A. The provisions of this Order, with the exception of Part VI A herein, shall be effective on and after August 15, 1953.

B. Policies and regulations in effect on and after October 15, 1962, regarding the amount of public assistance, are hereby continued in conformity with Section 5 of the Public Assistance Act of 1962.

C. All regulations in effect with the exception of those referred to in B, above, pertaining to the administration of public assistance in the District of Columbia, and not in conflict with the Public Assistance Act of 1962, are hereby continued, effective December 1, 1962.

#### REORGANIZATION ORDER NO. 59.—BOARDS, COMMISSIONS AND COMMITTEE

Reorg. Ord. No. 59, L. S. 4266-B, June 30, 1953, as amended July 17, 1953, Sept. 15, 1953, Dec. 10, 1953, June 17, 1954, June 27, 1957, June 24, 1958, July 29, 1958, Aug. 25, 1959, Jan. 26, 1960, Aug. 9, 1960, Mar. 21, 1961, May 25, 1961, Sept. 12, 1961, Feb. 20, 1962, Feb. 12, 1963, Mar. 13, 1963, Apr. 16, 1963, Aug. 5, 1963, Sept. 19, 1963, Oct. 10, 1963, and Oct. 17, 1963, ordered that:

##### PART I

#### Department of Occupations and Professions.—

#### Physical Therapists Examining Board.

##### PART IV

#### Functions.—

#### B. Office of the Director.

5. Maintains a register of all persons registered as physical therapists, and a register of approved schools of physical therapy, pursuant to the Physical Therapists Practice Act, Public Law 87-280, 75 Stat. 578.

##### PART V

C. Qualification requirements shall be determined and officers shall be chosen in accordance with the statutes and regulations applicable to the boards, commissions, and committee having the same or similar names prior to their abolition by the Board of Commissioners on June 30, 1953, except that any person shall be eligible for appointment upon the Board of Podiatry Examiners who is a citizen of the United States and who has been for five years next preceding his appointment in the active and reputable practice of podiatry in the District of Columbia, and except that any person shall be eligible for appointment upon the Board of Dental Examiners who is a citizen of the United States and who has been for five years next preceding his appointment, both a resident of the Washington Metropolitan Area, as defined in the National Capital Planning Act of 1952, as amended, and in the active and reputable practice of dentistry in the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Board of Barber Examiners as they determine is in the best interest of the District Government, either upon the recommendations of interested groups or individuals, or without such recommendations, and with the further exception that in making appointments of members of the Board of Podiatry Examiners the Commissioners shall not be restricted to nominations submitted to them or to the membership of any particular group or organization but shall appoint to said Board such persons as they determine will be in the best interests of the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Real Estate Commission as they determine is in



the best interests of the District of Columbia. The Steam and Other Operating Engineers' Board shall be composed of three members, two of whom are practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Boiler Inspector for the District of Columbia; and three alternates, two of whom shall be practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Assistant Chief, Smoke and Boiler Section, Department of Licenses and Inspections. The Commission on Licensure To Practice the Healing Art in the District of Columbia shall be composed of the President of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the Corporation Counsel of the District of Columbia, the Superintendent of Public Schools of the District of Columbia, and the Director of Public Health of the District of Columbia, each *ex officio*.

The District of Columbia Board of Cosmetology shall be composed of six members appointed by the Board of Commissioners. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practice of cosmetology, shall be a citizen of the United States and a resident of the District of Columbia and shall be in the active and reputable practice of cosmetology in the District of Columbia.

\* \* \* \* \*

E. The Real Estate Commission of the District of Columbia shall be composed of four (4) members appointed by the Board of Commissioners. In addition thereto, the Finance Officer, D.C. (formerly the Assessor, D.C.) shall continue to serve, *ex-officio*, as Chairman of the Real Estate Commission, and the Chief of the Property Tax Division, Finance Office, shall serve, *ex-officio*, as his Alternate, but without added compensation for their services as such.

\* \* \* \* \*

#### PART XIII

##### *Practical Nurses' Examining Board*

A. *Establishment.*—Pursuant to authority contained in Section 7 of Public Law 86-708, effective July 29, 1961, there is hereby established, within the Department of Occupations and Professions, a Practical Nurses' Examining Board.

B. *Delegation of functions.*—The Practical Nurses' Examining Board is hereby delegated the technical and professional functions vested in the Commissioners by sections 8, 9, 10, 11, 12, and 14 of Public Law 86-708, including the function of making final determinations in connection with the denial, suspension or revocation of licenses and the administrative functions authorized to be performed by such sections are hereby delegated to the Director: *Provided*, That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in section 8 shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Practical Nurses' Examining Board shall be composed of seven members appointed by the Board of Commissioners. Four such members shall be graduate nurses duly registered in the District of Columbia under provisions of the Act of February 9, 1907, as amended (D.C. Code, 1951 edition, Sec. 2-401 through 2-411), and who shall have had, since graduation, at least five years of experience in the nursing service. Three such members shall be practical nurses. From and after October 26, 1961, all such practical nurse members shall be duly licensed under the provisions of Public Law 86-708. At least two practical nurse members of such Board shall be present at each meeting of the Board.

D. *Terms.*—The initial appointments to the Practical Nurses' Examining Board shall be for the following terms: one graduate nurse and one practical nurse member for one year; one graduate nurse member and one practical nurse member for two years; and two graduate nurse members and one practical nurse member for three years. Thereafter, except in those instances when appointment is made to fill an unexpired term, each member of the Practical Nurses' Examining Board shall be appointed for a term of three years or until her successor has been

appointed and qualified. In the event that any vacancy should occur in the membership of the Practical Nurses' Examining Board in any manner other than by the expiration of time, the Board of Commissioners shall fill such vacancy in the usual manner, for the duration of the unexpired term.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Practical Nurses' Examining Board.

#### PART XIII

##### *Physical Therapists Examining Board*

A. *Establishment.*—Pursuant to authority contained in Section 6 of Public Law 87-280, there is hereby established, within the Department of Occupations and Professions, a Physical Therapists Examining Board.

B. *Delegation of functions.*—The Physical Therapists Examining Board is hereby delegated all of the technical and professional functions vested in the Board of Commissioners by Public Law 87-280, including the function of making final determinations in connection with the denial, suspension, or revocation of registrations, and the administrative functions authorized to be performed by the Board of Commissioners in Public Law 87-280 are hereby delegated to the Director of the Department of Occupations and Professions: *Provided*, That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in Section 7 of Public Law 87-280, and the functions of establishing or changing the annual expiration date of registrations and the fixing, increasing, and decreasing of fees as provided in Sections 12 and 19 respectively of Public Law 87-280, shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Physical Therapists Examining Board shall be composed of three members appointed by the Board of Commissioners. They shall be physical therapists, with at least five years experience in physical therapy in the District of Columbia. From and after February 20, 1963, all such members shall be duly registered under the provisions of Public Law 87-280.

D. *Terms of appointment.*—Members shall hold office for 3 years, except that of the initial appointments of members following the effective date of this Order, one shall serve for one year, such term to expire February 19, 1964; one for two years, such term to expire February 19, 1965; and one for three years, such term to expire February 19, 1966. Following establishment of this Board, all provisions of Part V of this Order shall apply.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Physical Therapists Examining Board.

#### ORGANIZATION ORDER NO. 101.—OFFICE OF THE RECORDER OF DEEDS

Organization Ord. No. 104, 63-197, Jan. 24, 1963, and amended Mar. 13, 1963, ordered that:

Organization Order No. 130, dated Apr. 26, 1962, relative to the Office of the Recorder of Deeds, is hereby repealed in its entirety.

That Organization Order No. 101, dated Sept. 16, 1954, as amended, relative to the Recorder of Deeds, is hereby superseded in its entirety and replaced as follows:

#### PART I

##### *Delegations of authority*

A. *Recording of deeds.*—Section 548 of the Act of Congress approved March 3, 1901, as amended (§ 45-701, D.C. Code 1961 edition), provides among other things that there shall be a "Recorder of Deeds of the District appointed by the Commissioners of the District of Columbia, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office . . . All of the duties and functions of the Recorder of Deeds and of officers and employees in his office shall be performed subject to the supervision and control of the Commissioners of the District."



**B. D.C. Business Corporation Act.**—The Recorder of Deeds is hereby continued as the agent of the Commissioners to perform all functions vested in the Commissioners by the District of Columbia Business Corporation Act, as amended (Title 29, Ch. 9, D.C. Code 1961 edition), except the functions of promulgating regulations and increasing or decreasing fees, which shall remain vested in the Commissioners.

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to time, any and all of the functions delegated to the Recorder of Deeds by this Part.

**C. D.C. Real Estate Deed Recordation Tax Act.**—The Recorder of Deeds is hereby continued as the agent of the Commissioners of the District for the purpose of administering, to the extent herein provided, the provisions of the District of Columbia Real Estate Deed Recordation Tax Act (Title III, Act of Congress approved Mar. 3, 1962; Pub. L. 87-408; 76 Stat. 11), namely:

(a) Receives and examines all returns required to be filed with any deed submitted for recordation. Forwards all returns to Finance Office upon completion of examination and processing.

(b) Maintains for purposes of Office of Recorder of Deeds such staff, records, and accounts as may be required or necessary in connection with the recordation of deeds and the receiving and accounting for taxes applicable to such deeds.

(c) Receives all taxes applicable to deeds presented and accepted for recordation, except such taxes as are assessed as a deficiency and collected by the Finance Office, and records the amount thereof on the deed.

(d) Except where the Finance Officer has waived as to a party to a deed the requirement for the filing of a return by such party, or has extended the time for filing of a return by a party, rejects for recordation any deed for which a return is required to be filed if such deed is not accompanied by a return in proper form, executed by all the parties to the deed.

(e) Except where the Finance Officer has extended the time for payment of the tax applicable to a deed submitted for recordation, or has accepted security for the payment of the tax, rejects for recordation any deed for which a tax is required to be paid, if the full amount of the applicable tax is not tendered with the deed.

(f) Checks returns for arithmetical accuracy in the computation of the amount of tax due. Where an arithmetical computation, as made on a return, is erroneous, may, in his discretion, recompute the tax and, upon payment of the tax as recomputed, accept for recordation the deed to which the return applies, noting on the return the action taken.

(g) Accounts for and transmits to the Finance Officer in accordance with established procedures, all taxes collected upon recordation of deeds.

(h) Except as otherwise modified pursuant to this order, performs such duties and functions and carries out such procedures relating to the recordation of deeds as are now or may hereafter be prescribed for the conduct of the Office of the Recorder of Deeds, D.C.

(i) Except as to deeds which are exempt from tax and which may be recorded without the filing of a return, refers to the Finance Officer for review when requested by him in writing, any deed for which a return is required to be filed and for which exemption from tax is claimed, and records such deed only upon notification by the Finance Officer that the deed is exempt from tax, or, if such deed is determined to be taxable, records deed only upon payment of applicable tax.

(j) Administers oaths and affirmations to parties to deeds when required in connection with a return or other document presented to him for purposes of recordation of a deed.

**D. D.C. Non-Profit Corporation Act.**—Effective February 3, 1963, the Recorder of Deeds is hereby designated the agent of the Commissioners of the District of Columbia to perform every function vested in said Commissioners by the District of Columbia Non-Profit Corporation Act, approved August 6, 1962 (Pub. L. 87-569; 76 Stat. 265).

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to

time, any and all of the functions which are delegated to the Recorder of Deeds by this part.

**E. Uniform Limited Partnership Act.**—The District of Columbia Uniform Limited Partnership Act approved September 28, 1962 (Pub. L. 87-716; 76 Stat. 655) provides that the Office of the Recorder of Deeds shall serve as an office of record for the recording, filing, indexing, and handling of limited partnerships.

**F. Metropolitan Police Relief Association Act.**—The Recorder of Deeds is hereby designated the agent of the Commissioners to perform the functions vested in the Commissioners by section 13 of the Act approved July 5, 1962 (Pub. L. 87-523; 76 Stat. 135), incorporating the Metropolitan Police Relief Association of the District of Columbia.

## PART II

**Redelegation of authority.**—With respect to the functions delegated to him by the Commissioners, as set forth in subparts B, C, D, and F, of Part I, the Recorder of Deeds shall have full authority over all such functions, including the power to redelegate such of the powers delegated to him by the Commissioners as in his judgment may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations and shall be subject to the administrative direction and control of the Commissioner to whom the Office of the Recorder of Deeds is assigned.

## PART III

**Organization.**—There shall be established in the Office of the Recorder of Deeds as many organizational components and positions with such duties and responsibilities as the Recorder shall from time to time determine; *Provided*, That all actions establishing, altering, changing, or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration, for appropriate action pursuant to applicable Commissioners' Orders.

## PART IV

**Functions.**—The functions of the Office of the Recorder of Deeds shall include, but not be limited to, the following in accordance with the delegations contained in Part I herein:

A. Serves as an office of record for the recording, filing and handling of all public records in the form of deeds, deeds of trust, motor vehicle liens, chattel mortgages, contracts and other instruments in writing affecting a right, title or interest in real and personal property in the District of Columbia.

B. Maintains an index to real property in the District of Columbia through which the recorded history of ownership of such property is made available to the public.

C. Serves as an office of record for the recording, filing, indexing and handling of limited partnerships in accordance with Pub. L. 87-716.

D. Performs all functions specified in subparts B and D of Part I, of this Order pertaining to the Business Corporation Act and the Non-Profit Corporation Act.

E. Performs all functions specified in subpart C of Part I of this Order pertaining to the Real Estate Deed Recordation Tax Act.

F. Files, without charge, services discharge papers for veterans of the armed forces.

G. Recommends to the Commissioners and drafts new laws and regulations and amendments to existing laws and regulations and recommends increases and decreases in fees pertaining to the functions of the Office.

H. Provides photostatic certified copies of legal documents of record for use in various Courts of law in the District of Columbia, and the several States, and foreign countries.

I. Collects all fees, license taxes, penalties, and other charges, as prescribed in or under the authority of the heretofore cited legislation, and deposits same with the D.C. Treasurer.



# ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

Organization Ord. No. 105, 55-885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, and Nov. 7, 1961, ordered that:

## PART IV

### F. Vehicle Control Division:

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, processes and requirements covering the titling and registration of, and issuance of owners' identification tags for motor vehicles and trailers, and, the inspection of such vehicles and trailers for mechanical safety and for the prevention of noise and air pollution.

# ORGANIZATION ORDER NO. 107.—HACKERS' BOARD

1. That, effective as prescribed by paragraph 2 of this order, Organization Order No. 107, dated May 17, 1955, as amended Dec. 18, 1958, Apr. 5, 1960, Sept. 20, 1960, Sept. 18, 1962, Oct. 30, 1962, and Nov. 6, 1962, ordered:

## PART I

The Board of Revocation and Review of Hackers' Identification Cards, established by Reorganization Order No. 54, dated June 30, 1953, as amended, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner, but shall hereafter be known as the Hackers' License Appeal Board, with the short title of Hackers' Board.

## PART II

A. *Membership.*—The Hackers' Board shall consist of five (5) members, namely:

(1) An employee in the Permit Control Division, Department of Motor Vehicles, as designated from time to time by the Director, Department of Motor Vehicles, who shall be chairman;

(2) A member of the Citizens' Traffic Board (hereinafter, Traffic Board), assigned and compensated as hereinafter provided;

(3) Two attorneys designated and compensated as hereinafter provided, to be selected and assigned as required by paragraph (2) of subpart C of this Part.

(4) An Assistant Corporation Counsel, as designated from time to time by the Corporation Counsel.

B. *Quorum.*—Three members shall constitute a quorum, one of whom shall be the Assistant Corporation Counsel member and one of whom shall be one of the two attorney members from the bar associations.

### C. Designation, appointment, and assignment:

(1) (a) The Executive Secretary of the Traffic Board shall keep the Chairman of the Hackers' Board currently advised of the names of the members of the Traffic Board who are willing to serve as members of the Hackers' Board, and the Chairman shall maintain a list of such members.

(b) The Chairman of the Hackers' Board shall assign such Traffic Board members in rotation to sit in specified cases or at specified times.

(2) (a) The President of the Bar Association of the District of Columbia and the President of the Washington Bar Association of the District of Columbia each having submitted to the President, Board of Commissioners, the names of not less than 16 members of his Association who are willing to serve as members of the Hackers' Board and whom he nominates for appointment to said Board, the President of the Board of Commissioners shall, annually, submit to the Board of Commissioners for its consideration said panels of not less than 16 names each. The Board of Commissioners shall consider such panels and shall make a selection either therefrom or otherwise of not more than 16 attorneys as members of the said Hackers' Board who shall serve until their successors are appointed and who shall be subject to removal by the Board of Commissioners. After the said appointees have taken the oath of office, the Secretary, Board of Commissioners, shall furnish to the Chairman of the Hackers' Board a list naming the attorney members appointed to said Board.

(b) The Chairman of the Hackers' Board shall assign such attorney members in rotation to sit in specified cases or at specified times.

D. *Oath and Compensation.*—The members of the Traffic Board and the attorney members appointed on nomination by the bar associations or otherwise shall be intermittent employees of the District of Columbia, shall take the oath of office prescribed for civil employees of the District of Columbia, and shall receive compensation when actually performing services as members of the Hackers' Board.

### E. Conflict of interest:

(1) The members who are intermittent employees of the District of Columbia shall, upon taking the oath of office, file with the Director, Department of Motor Vehicles, a statement in detail of any and all private interests that such members may have relating to vehicles for hire, including, without limitation, legal or other representation, ownership, management or operation of vehicles for hire or the drivers thereof. Such statements shall be promptly amended or supplemented to reflect any change in such private interests.

(2) Upon the filing of the statement provided for in the preceding subparagraph, the member filing same shall, if such statement reflects all current conditions required to be included therein, be considered to have the written permission of the appropriate authority, as required by the last paragraph on page 10B-5 of the District of Columbia Personnel Manual, to engage in the practice or pursuit of such private interests, provided that he does not participate in the hearing, consideration or determination of any matter involving any interest, direct or indirect, contained in any such statement so filed with the Director, or properly includable in any such statement.

## PART III

A. The functions and responsibilities of the Hackers' Board shall be to:

(1) Consider appeals from adverse decisions on applications for licenses submitted in accordance with the requirements of subparagraphs (e) and (j) of paragraph 31 of section 7 of the Act approved July 1, 1902, as amended (§ 47-2331 (e) and (j), D.C. Code, 1961 edition) and affirm such decisions, or approve such applications.

(2) Determine whether a complaint against an individual licensed in accordance with the requirements of subparagraphs (e) or (j) of paragraph 31 of section 7 of such Act approved July 1, 1902, as amended, justifies the suspension or revocation of such license under the authority contained in subparagraph (a) of paragraph 46 of section 7 of such Act (§ 47-2345(a), D.C. Code, 1961 edition), and, if such action be justified, suspend or revoke such license.

(3) Recommend to the Board of Commissioners changes in criteria or standards to be applied in the denial of applications submitted in accordance with the requirements of paragraphs (e) and (j) of section 47-2331 of the D.C. Code, and in the suspension or revocation of such licenses under the authority of section 47-2345(a) of the D.C. Code.

B. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act approved July 1, 1902 (32 Stat. 591; § 1-237, D.C. Code, 1961 edition), and the Board shall possess the powers vested in the Commissioners by that Act.

C. The procedures of the Board shall be in accordance with such rules as may be prescribed by the Corporation Counsel, and the said Corporation Counsel is hereby authorized to prescribe, and from time to time amend, rules governing the procedures of the Board, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

D. The decisions of the Board pursuant to subpart A shall be final.

## PART IV

The Department of Motor Vehicles shall provide the necessary administrative services for the Hackers' Board.

2. That paragraph 1 of this Order shall become effective thirty days from the date on which the Commissioners



forward to the Chairman of the Hackers' Board the list of attorneys selected and appointed by them in accordance with Part II.C.(2) of Organization Order No. 107, as amended by said paragraph 1 hereof, except that, for the purpose of designating, or of selecting and qualifying, the individuals who shall become members of such Hackers' Board, Part II of Organization Order No. 107, as so amended, shall become effective immediately. After the expiration of such thirty day period, all matters then pending before the Board of Revocation and Review of Hackers' Identification Cards or on appeal from its actions shall be within the jurisdiction of the Hackers' Board which shall take such action in any such matter as it deems advisable.

[This part was amended Oct. 30, 1962, by order No. 62-2066, by striking out "15 days" and substituting "thirty days".]

#### ORGANIZATION ORDER NO. 108.—CITIZENS' TRAFFIC BOARD

Organization Ord. No. 108, 55-888, May 17, 1955, as amended Feb. 18, 1959, Sept. 12, 1961, Dec. 12, 1961, and Mar. 27, 1962, ordered that:

#### PART III

##### *Composition and membership:*

1. The Citizens' Traffic Board shall consist of not to exceed 25 members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners, except that during the period April 1, 1962, to April 1, 1963, the Citizens' Traffic Board shall consist of not to exceed 27 members: *Provided*, That if, during such period one or more members of such Board is or are separated therefrom by death, resignation or otherwise, such member or members may be replaced so that the membership of the Board shall not, during such period, exceed 26 if one member is so separated and shall not exceed 25 if two or more members are so separated. Members shall hold office for terms of three years, except that of the initial appointments one-third shall serve for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year. Appointments scheduled to terminate or begin on Feb. 18, 1962, shall instead terminate or begin on Apr. 1, 1962. April 1 shall subsequently be the regular date of rotation of appointments each year.

2. The Board shall solicit the participation in its activities of those individuals, firms, associations, and other groups considered by the Board qualified and willing to assist in the Board's mission. Invitations to participate in the activities of the Board and the acceptances of such invitations will be made a matter of record by the Board.

#### PART IV

1. The Board of Commissioners shall designate the Chairman and two Vice Chairmen of the Board.

#### ORGANIZATION ORDER NO. 109.—ESTABLISHING POSITION OF ASSISTANT ENGINEER COMMISSIONER FOR URBAN RENEWAL AND ESTABLISHING AN OFFICE OF URBAN RENEWAL

Organization Ord. No. 109, 55-996, May 31, 1955, as amended Feb. 13, 1962, ordered:

#### PART II

- A. \* \* \*
- B. *Functions.*—\* \* \*
1. \* \* \*
2. \* \* \*
3. \* \* \*
4. \* \* \*

5. \* \* \*

6. Development of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

#### PART III

\* \* \* \* \*

A. *Purpose and functions.*—\* \* \*

1. \* \* \*
2. \* \* \*
3. \* \* \*
4. \* \* \*
5. \* \* \*

6. Development of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

#### ORGANIZATION ORDER NO. 110.—COMMISSIONERS' URBAN RENEWAL COUNCIL

Organization Ord. No. 110, 55-997, May 31, 1955, as amended Sept. 4, 1958; Mar. 22, 1960, July 14, 1960, July 6, 1961, and Aug. 31, 1961, ordered that:

#### PART III

*Composition and membership.*—1. The Commissioners' Urban Renewal Council shall consist of seven members appointed by the Board of Commissioners. After July 14, 1960, every appointment of a member shall be for a term of three years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member shall continue to serve until his successor is appointed and has qualified. Every person who, on July 14, 1960, is a member shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon expiration of said term the three-year term herein provided shall immediately commence, but such member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

2. If, in the opinion of the Council, it is considered necessary or desirable to augment the effort of the Council in order to carry out its work, the Council may request the Commissioners to designate other citizens as affiliate members of the Council. Affiliate members may serve on committees and take part in such proceedings as determined by the Council but shall have no vote in Council deliberations. Terms of service for affiliate appointees shall be as in preceding paragraph 1, of Part III.

#### ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55-1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, and Dec. 4, 1962, ordered that:

#### PART I.—BOARD OF APPEALS AND REVIEW

A. *Establishment.*—The Board of Appeals and Review, established in Part VIII of Reorganization Order No. 55, as amended, is hereby reconstituted as described below.

B. *Purpose, composition, qualifications of members and terms of office:*

1. The Board of Appeals and Review is an administrative agency in the Government of the District of Columbia providing a final administrative remedy in those cases assigned to it.

2. The Board of Appeals and Review shall consist of twenty-two members. The Chairman and Vice Chairman of the Board shall be designated by the Commissioners, provided, however, that the Vice Chairman shall exercise the authorities of the Chairman only in the absence of said Chairman.

3. Of the twenty-two members of the Board,  
(a) seven shall be full-time employees of the District of Columbia of grade GS-13 or higher, but no such member shall be an employee of the District of Columbia in either the Office of the Corporation Counsel or in the



Department of Licenses and Inspections. These employees shall receive no additional compensation for work performed by virtue of their appointment or service as members of the Board.

(b) fourteen shall be intermittent employees of the District of Columbia, each of whom resides in said District or owns in his own name real property therein, seven of whom shall be members of the Bar of the District of Columbia who have had at least five years experience in the active practice of law in the District of Columbia, and eight of whom shall be persons who possess, to the extent that the Commissioners may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction, finance, public health, and social service, and with respect to whom the Commissioners shall take into account their qualifications, experience and community interests. These employees shall receive compensation when actually performing service as members of the Board.

4. The term of office of each member of the Board shall be three years, except that commencing May 1, 1960, the terms of two full-time and four intermittent members shall be for one (1) year from May 1, 1960, the terms of two full-time and four intermittent members shall be for two (2) years from May 1, 1960, and the terms of three full-time and seven intermittent members shall be for three years from May 1, 1960. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term each member shall continue to serve until his successor has been appointed and qualified. Members shall be appointed, and may be removed, by the Commissioners of the District of Columbia. On April 30, 1960, the terms of office and continued service of all members theretofore appointed to the Board shall terminate. No person who has served continuously for six years or more as a member of the Board as heretofore constituted or as constituted by this order shall be re-appointed as a member until the expiration of one year from the end of such service.

C. *Functions.*—The Board of Appeals and Review shall consider on appeal decisions in the following types of cases, where error in such decisions is alleged by the appellants, and make a final determination sustaining, reversing, or modifying the action from which the appeal is taken.

#### D. *Organization.*

1. \* \* \*

2. (a) (1). \* \* \*

(2) The Chairman is authorized, in appeals involving the termination by operation of law of licenses issued under the authority of the regulations adopted and promulgated by Commissioners' Order of May 28, 1943 (E.D. 210583-54), and November 24, 1943 (E.D. 236470-27), known as the "Temporary Regulations", to require preliminary conferences between appellants and attorney members of the Board for the purpose of determining whether the appeals filed by such appellants state cases on which relief can be granted. To this end, the Chairman is authorized from time to time to designate attorney members of the Board who are not full-time employees of the District of Columbia to conduct conferences having for their purpose the determination of whether appellants have grounds upon which relief can be granted for contesting the acts or decisions from which they are appealing. Each attorney member so designated by the Chairman shall have authority to confer with an appellant concerning the validity of his appeal; to require the attendance of such officers or employees, or the production of such records, of the District of Columbia as may be necessary, in the discretion of the attorney member, to permit him to evaluate such appeal; to permit the appellant to amend his appeal; and to act on behalf of the Board to dismiss any appeal which, after opportunity for amendment has been given the appellant, fails in the opinion of the attorney member to state a case. Such dismissal by the attorney member shall be the final action of the Board. It shall, however, as any other final action of the Board, be subject to reconsideration by the Board, upon timely application by the appellant, in accordance with the Board's Rules of Practice and Procedure. Any attorney member of the Board who conducts a conference under the authority of this paragraph shall not, after disposing of the matter, be eligible to serve

in connection with any reconsideration of the matter by the Board.

(b) (1) \* \* \*

(2) The Chairman may, in lieu of assigning to a Hearing Committee an appeal involving the termination by operation of law of a license issued under the authority of the Temporary Regulations, refer to an attorney member of the Board designated under the authority of subparagraph (2) of the preceding paragraph (a) any such appeal which, in the opinion of the Chairman, requires or merits a conference as authorized by such subparagraph (a) (2). After such conference, the Chairman shall take such action on behalf of the Board as is necessary in the light of the action or recommendation of the attorney member conducting such conference. If such action results in the dismissal of an appeal, such dismissal shall be subject to reconsideration by the Board, upon timely application therefor by the appellant, filed in accordance with the Board's Rules of Practice and Procedure.

\* \* \* \* \*

(iii) In each case make findings of fact, conclusions of law, and a decision sustaining, reversing, or modifying the action from which the appeal is taken.

#### ORGANIZATION ORDER NO. 113.—PROFESSIONAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

[Rescinded by Order No. 62-1959, Oct. 11, 1962.]

#### ORGANIZATION ORDER NO. 114.—GENERAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

[Rescinded by Order No. 62-1960, Oct. 11, 1962.]

#### ORGANIZATION ORDER NO. 119.—EMERGENCY AMBULANCE SERVICE COMMITTEE

Organization Ord. No. 119, 57-1669, Aug. 27, 1957, as amended June 23, 1959, and May 21, 1963, ordered that:

\* \* \* \* \*

#### PART V

*Organization.*—The Emergency Ambulance Service Advisory Committee shall determine its own organization, including the establishment of subcommittees, establish its own rules of procedure, and designate its officers except for the position of Chairman. Secretarial service and administrative support shall be provided by the Fire Department. All meetings of the Committee shall be at the call of the Chairman. Committee members shall have the right to request, through the Chairman, a meeting of the Committee at any time when the organization which they represent has a matter which it desires to bring to the attention of the Committee.

#### ORGANIZATION ORDER NO. 121.—DEPARTMENT OF GENERAL ADMINISTRATION, FINANCE OFFICE

Organization Ord. No. 121, 57-3276, Dec. 12, 1957, as amended Apr. 24, 1956, Nov. 13, 1958, Oct. 25, 1960, Aug. 24, 1961, Apr. 26, 1962, and Sept. 25, 1963, ordered:

\* \* \* \* \*

#### PART III

*Organization.*—A. There are hereby established in the Finance Office, under the supervision and direction of the Finance Officer, the following organizational components: Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Enforcement Division, Accounting Division, and Data Processing Division.

B. There shall be established in the Finance Office such other organizational components subordinate to those established in this Order and such positions, with such duties and titles as the Finance Officer, with the approval of the Director of General Administration, shall from time to time determine.

#### PART IV

\* \* \* \* \*

#### A. *Office of the Finance Officer:*

\* \* \* \* \*

13. Except as to such duties and functions as are performed in connection therewith by the Recorder of Deeds, D.C., administrators, as agent of the Commissioners, the



provisions of Title III of Public Law 87-408, 87th Congress, approved March 2, 1962.

\* \* \* \* \*

B. *Property Tax Division:*

\* \* \* \* \*

6. Administers real estate tax sales.

7. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

\* \* \* \* \*

D. *Treasury Division:*

1. Collects revenues of the District of Columbia, accounts for and distributes all collections into appropriate revenue accounts, and deposits with the Treasurer of the United States all funds so received.

2. Makes disbursements in accordance with law and regulation, in cash or by checks drawn on the Treasurer of the United States, based on vouchers and payrolls duly certified by a designated certifying officer, and is accountable therefor.

3. Is responsible for all balances with the United States Treasury.

4. Dispenses and accounts for tax stamps.

5. Is responsible for the custody of trust fund securities.

\* \* \* \* \*

G. *Data Processing Division:*

1. Utilizing electronic data processing systems and related equipment, performs centralized data processing operations for the Finance Office, including but not limited to tax, accounting, and payroll programs.

2. From time to time, performs automatic data processing services for the departments and agencies of the District of Columbia, based on the needs and requirements of such departments and agencies and the Division's schedule of operations.

3. Performs such other related duties as may be necessary for the proper performance of the functions assigned.

#### ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

Organization Ord. No. 122, 59-33, Jan. 8, 1959, and amended Oct. 17, 1961, ordered:

That Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

\* \* \* \* \*

#### PART IV

\* \* \* \* \*

D. *Bureau of Construction and Maintenance.*—Directs the construction, maintenance, repair, and inspection program for highway projects and municipal wharves; performs field survey work on highway projects; procures, maintains, repairs and houses departmental vehicles and equipment and such non-departmental vehicles and equipment as the Commissioners order from time to time; performs landscaping in street right-of-way and activities related to the maintenance and beautification of such streets; operates draw spans; controls the transporting of over or undersize loads through the District; participates and furnishes equipment during emergency snow removal; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies; maintains grounds and public parking under the jurisdiction and control of the District of Columbia Government other than those specifically assigned to other District Government departments, agencies and institutions; and operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department of Highways and Traffic, including the maintenance of adjacent grounds and the providing of necessary protective, elevator, custodial and other related services.

\* \* \* \* \*

#### ORGANIZATION ORDER NO. 125.—COMMISSIONERS' COUNCIL ON HUMAN RELATIONS

Organization Ord. No. 125, 61-846, May 9, 1961, as amended Oct. 10, 1963, ordered that:

In accordance with the public policy of the United States that all citizens without regard to their race, religion, color, ancestry or national origin, sex or age shall have equality of opportunity with respect to employment in the government and in the use of government facilities and services, the Board of Commissioners issued its policy orders prohibiting discrimination in the District of Columbia Government and in connection with work performed under District Government contracts ordered that:

Commissioners' Order No. 58-535, dated April 9, 1958, as amended, establishing a Commissioners' Council on Human Relations, is hereby redesignated Organization Order No. 125, and amended to read as follows:

That in keeping with these policy orders and with the public policy of the United States to encourage harmonious relations among the residents of every community and to encourage the granting of equality of opportunity by persons engaged in private business, the Board of Commissioners hereby creates the Commissioners' Council on Human Relations.

1. *Purpose.*—The purpose of the Council shall be to advise and assist the Commissioners to promote, foster, and encourage (a) the full and impartial application and observance of the Commissioners' policy on non-discrimination within the District Government as it relates to employment and use of District-owned facilities; (b) the full and impartial application and observance of fair employment practices by persons holding District Government contracts; (c) with the approval of persons or corporations concerned, the observance and practice of fair employment policies by persons or firms in the District of Columbia; and (d) the observance and practice of good human relations, mutual understanding and equality of opportunity among the various racial, religious and ethnic groups of the community.

2. *Functions.*—a. The Council shall study, and upon complaint inquire into, and advise and assist the Board of Commissioners in relation to the following:

(1) Commissioners' nondiscrimination policy order on employment in District Government and use of District-owned facilities.

(2) Procedures to promote, assure, and maintain equal access to and advancement in employment in the District Government.

(3) Procedures prescribed by the District Government to assure compliance with the nondiscrimination-in-employment clause inserted in District contracts, in accordance with the policies of the Commissioners mentioned herein.

(4) Complaints of discrimination in employment patterns and practices contrary to the Commissioners' policy relating to District Government contracts.

(5) Programs for assisting officials, supervisors and employees of the District of Columbia Government in improvement of human relations practices.

(6) Educational programs for employer, labor, civic, educational, religious, and other nongovernmental groups in order to eliminate or reduce the basic causes of discrimination on the ground of race, creed, color or national origin.

b. The Council shall receive and may investigate complaints of tension, conflict and practices of discrimination and of efforts or activities of individuals or groups to incite discord, tension, hate and suspicion which may lead to breaches of peace and public disorder.

c. The Council shall serve in an advisory and consultative capacity to all departments, advisory boards, regulatory agencies and for other organizations of District Government to assure the effective compliance with the Commissioners' nondiscrimination policies and orders.

d. The Council shall perform any other advisory duties as directed by the Commissioners for the promotion of better human relations and understanding among community groups.

3. *Composition and term of office.*—The Council shall consist of nine (9) members selected by the Board of Commissioners. Persons appointed to serve on the Council shall be outstanding persons residing or having their principal places of business in the District of Columbia and representing a cross section of the viewpoints of the community. Salaried District Government



employees shall not be eligible to serve as members of the Council. Members shall hold office for terms of three (3) years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

4. *Oath of office.*—Members shall take an oath of office as follows:

"I, -----, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Council on Human Relations, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

5. *Compensation.*—Members shall serve without compensation.

6. *Organization.*—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director to the Council shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization, name its own officers other than the Chairman, who shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

7. *Administration.*—The Executive Director of the Council shall be responsible for the administration of the Council. Expenses incurred by the Council as a whole, or by individual members, or its staff, shall be met from funds provided for the administration of District affairs.

8. *Reports.*—The Council shall regularly report its activities to the Board of Commissioners.

#### ORGANIZATION ORDER NO. 126.—COMMISSIONERS' ADVISORY COMMITTEE ON PRACTICAL NURSING

Organization Ord. No. 126, 61-1046, June 19, 1961, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Practical Nursing.

##### PART I

*Purpose.*—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 86-708 pertaining to the licensing of practical nurses in the District of Columbia which shall become effective July 29, 1961.

##### PART II

*Functions.*—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 86-708.

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of practical nurses in the District of Columbia.

(3) The establishment of standards for the accreditation of schools of public nursing in the District of Columbia.

(4) The establishment of policies and procedures pertaining to the licensing of practical nurses in the District of Columbia.

(5) The issuance of bylaws pertaining to the functions and activities of the District of Columbia Practical Nursing Examining Board to be established pursuant to Public Law 86-708.

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 86-708 as directed or requested by the Commissioners.

##### PART III

*Composition.*—The Committee shall consist of seven members appointed by the Board of Commissioners on the basis of personal qualification. Persons appointed to membership on the Committee shall be of outstanding ability and shall be currently employed in the District of Columbia either as a practical nurse or as a graduate nurse duly registered under the Act of February 9, 1907, as amended, with at least five years of experience as a nurse since graduation. Three members of the Committee shall be practical nurses and four members shall be graduate nurses.

##### PART IV

*Term of office.*—All appointments of members to the Committee shall expire as of midnight July 28, 1961, at which time the Committee shall be abolished.

##### PART V

*Compensation.*—Members shall serve without compensation.

##### PART VI

*Oath of office.*—Members shall take an oath of office as follows:

"I, -----, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Practical Nursing, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

##### PART VII

*Organization.*—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization select its own officers and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

#### ORGANIZATION ORDER NO. 127.—COMMITTEE ON EMPLOYEE CONDUCT

Organization Ord. No. 127, 61-1430, Aug. 17, 1961, ordered that:

There is hereby designated a Committee on Employee Conduct composed of the three special assistants to the Commissioners. The Special Assistant to the President of the Board of Commissioners shall serve as permanent chairman. The Attorney-Editor, Office of the Secretary to the Board of Commissioners, shall serve as staff to the Committee.

The purpose of the Committee is to provide a point of contact, organizationally close to the Commissioners, for receiving and reviewing complaints, including anonymous calls, and for the handling of inquiries regarding matters that indicate possible misconduct by District Government officials and employees.

The Committee shall receive complaints, including anonymous calls and handle inquiries regarding matters that indicate possible misconduct on the part of District Government officials and employees; obtain and review all of the facts pertaining to such complaints; and advise the Commissioners in those instances where the nature and seriousness of the complaint or inquiry warrants the attention of the Commissioners.

District Government departments and agencies will be expected to cooperate and assist the Committee in the performance of its functions.

Nothing in this Order shall supersede or modify the provisions of Reorganization Order No. 48, dated June 26, 1953, as amended, which established Police Trial and Review Boards; Reorganization Order No. 39, dated June 18, 1953, which established Fire Trial Boards; or



Organization Order No. 125, dated May 9, 1961, as amended, which established the Commissioners' Council on Human Relations.

#### ORGANIZATION ORDER NO. 128.—COMMISSIONERS' COMMITTEE ON COMMUNITY RENEWAL

Organization Ord. No. 128, 62-285, Feb. 13, 1962, ordered:

There is hereby established in the Government of the District of Columbia a Commissioners' Committee on Community Renewal.

##### PART I

*Policy.*—The Government of the District of Columbia, working in close liaison and in cooperation with the National Capital Housing Authority, National Capital Planning Commission, and D.C. Redevelopment Land Agency, in accordance with the Housing Act of 1961, dedicates itself, and such of its resources and facilities as are available for such purposes, to the development of a realistic set of goals and objectives for the prevention and elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

##### PART II

*Purpose.*—The primary purpose of the Commissioners' Committee on Community Renewal shall be to advise the Board of Commissioners, through the Assistant Engineer Commissioner for Urban Renewal, on a realistic set of goals and objectives for the elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

##### PART III

*Functions.*—The activities of the Committee shall include, but are not limited to, the following activities:

1. To develop a basis of fact regarding existing structural conditions, neighborhood environment and blighting influences within the District of Columbia by:
  - a. Identifying all slum, blighted, deteriorated and deteriorating areas; and
  - b. Analyzing the nature and degree of blight and blighting influences within the area.
2. To identify the scope and character of the total need for renewal activities and the type of renewal treatment required to meet these needs within the framework of a Comprehensive Plan.
3. To establish the basic urban renewal objectives and policies to guide the development and effectuation of an overall, long-range program of urban renewal.
4. To establish the total program requirements necessary to achieve the basic objective of eliminating blight in the District of Columbia and relate this need to the anticipated resources of the District in regard to the following:
  - a. Financing such a program.
  - b. Handling the anticipated relocation load.
  - c. Providing the necessary rehousing accommodations.
  - d. Having the necessary legal authority, administration machinery and capacity for the enforcement of codes and ordinances, and for carrying out such a renewal program.
5. To establish a basic frame of reference and a procedure for the selection and delineation of individual projects and the determination of the priority and scheduling of individual projects within the overall Community Renewal Program.
6. To coordinate the preparation of the Community Renewal Program with the development of the Comprehensive Plan for the Nation's Capital.

##### PART IV

*Composition and Membership.*—1. The Commissioners' Committee on Community Renewal shall consist of the Assistant Engineer Commissioner for Urban Renewal, who shall serve as chairman, and the following ex-officio members:

Executive Director, National Capital Housing Authority;  
 Director, National Capital Planning Commission;  
 Executive Director, D.C. Redevelopment Land Agency;  
 Director, Department of General Administration;  
 Director, Department of Licenses and Inspections.

2. Staff assistance to the Committee will be furnished by the Office of Urban Renewal as determined by the Assistant Engineer Commissioner for Urban Renewal, who shall designate an Executive Secretary to the Committee from the Office of Urban Renewal.

3. The Commissioners' Committee on Community Renewal shall determine its own rules of procedure and may, if it so desires, establish and fill such additional officer positions, from its membership, as it may consider appropriate.

##### PART V

*Effective date.*—This Order shall be effective on and after Feb. 13, 1962.

#### ORGANIZATION ORDER NO. 129.—COMMITTEE ON MENTAL HEALTH NEEDS

Organization Ord. 129, 62-593, Mar. 19, 1962, ordered: That there is hereby established a special (ad hoc) Committee on Mental Health Needs, consisting of key legislative, executive, Federal and District, lay and professional persons, to evaluate mental health needs in the District of Columbia and to recommend solutions to these needs. This Committee shall be responsible for proposing appropriate action in both the public and private sectors of D.C. mental health field, and for developing priorities and cost estimates, as well as for consideration of facilities and services for prevention, treatment, and rehabilitation of mental illness.

#### ORGANIZATION ORDER NO. 130.—OFFICE OF RECORDER OF DEEDS, REAL ESTATE RECORDATION TAX

This order dated Apr. 26, 1962, relating to the recordation tax act [Sec. 45-721 et seq.] is set out as a note to section 45-721. [Repealed by Order No. 63-197, Jan. 24, 1963. See Org. Order 101.]

#### ORGANIZATION ORDER NO. 131.—MANPOWER ADVISORY COMMITTEE FOR D.C.

Organization Ord. No. 131, 62-1076, June 19, 1962, ordered:

There is hereby established in the Government of the District of Columbia a committee of persons representing management, labor, and the public at large to be known as the Manpower Advisory Committee for the District of Columbia.

##### PART I

*Purpose.*—The purpose of the Committee is to insure full community participation and support in the District's program of providing occupational training for the unemployed or underemployed under the provisions of the Manpower Development and Training Act of 1962.

##### PART II

*Functions.*—The functions of the Committee are to advise the Board of Commissioner, the Superintendent of Schools and the Director, United States Employment Service for District of Columbia on the following:

- (1) Determining in advance what skills are going to be needed, where they will be needed, and what quantities.
- (2) Studying the factors that impede the mobility of workers.
- (3) Developing new training programs or revising existing ones.
- (4) Developing on-the-job programs in local establishments.
- (5) Facilitating the placement of trainees.
- (6) Making maximum use of the skills and potentials of workers and assuring equal opportunity for employment of workers in accordance with their qualifications.

##### PART III

*Composition.*—The Committee shall consist of nine (9) members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. The members shall be chosen so that three represent management, three represent labor and three represent the public at large. Members shall serve without compensation.

## PART IV

*Terms of appointment.*—All appointments of members to the Committee shall expire as of midnight, June 30, 1965, at which time the Committee shall be abolished.

## PART V

*Organization.*—The Committee shall designate its own officers.

## ORGANIZATION ORDER NO. 132.—COMMITTEE ON YOUTH OPPORTUNITY AND COMMUNITY IMPROVEMENT

Organization Ord. No. 132, 62-1280, July 24, 1962, ordered that:

*Preamble.* A resolution, issued on June 29, 1962, by the President's Committee on Juvenile Delinquency and Youth Crime, reads in part as follows:

"To expedite a program of youth services, we are now allocating \$100,767 from funds made available under the Juvenile Delinquency And Youth Offenses Control Act of 1961 to employ an immediate planning staff for the Washington metropolitan area.

"This staff, directly responsible to us, will work in close cooperation with the Board of Commissioners and the departments of the City, and will consult with interested citizens and groups throughout the metropolitan area. They will report \* \* \* on the design of a planning program and appropriate vehicles for action. They will make recommendations on the best structure needed to support this plan of action."

Pursuant to the intent and purposes of this Resolution, it is hereby ordered:

## PART I

*Committee on Youth Opportunity and Community Improvement.*—There is established, under the supervision and control of the Board of Commissioners, a Committee on Youth Opportunity and Community Improvement, herein referred to as the Committee.

## PART II

*Functions.*—The Committee shall perform the following functions:

A. Serve as an advisory group to the Board of Commissioners in connection with the grant to the District of Columbia, as announced in the Committee Resolution.

B. Serve as an advisory and consulting group to the planning staff which is responsible, under the President's Committee, for designing a planning program for the District of Columbia, on such matters as the organizational structure needed for effective planning and action programs, and the preparation of the District's application for a planning grant scheduled for review by the President's Committee before the end of 1962.

## PART III

*Composition.*—The Committee shall consist of the designated representative of the following organizations:

## A. Community Organizations.—

1. Americans for Democratic Action.
2. Archdiocese of Washington.
3. Boy Scouts of America, National Capital Area Council.
4. Council of Churches, National Capital Area.
5. District of Columbia Chamber of Commerce.
6. D.C. Congress of Parents and Teachers.
7. D.C. Junior Chamber of Commerce.
8. Democratic Central Committee for D.C.
9. District of Columbia Medical Association.
10. Federation of Business Men's Associations, Metropolitan Area.
11. Federation of Citizens Associations.
12. Federation of Civic Associations.
13. Greater Washington Central Labor Council.
14. Health and Welfare Council.
15. Jewish Community Council of Greater Washington.
16. Junior League of Washington, Inc.
17. K Street Young Women's Christian Association.
18. League of Women Voters.
19. Metropolitan Washington Board of Trade.
20. National Association for the Advancement of Colored People.

21. National Conference of Christians and Jews.
22. National Council of Jewish Women.
23. Republican Committee for the D.C.
24. Washington Urban League.
25. Young Men's Christian Association, Twelfth Street Branch.

## B. Universities.

1. American University.
2. Catholic University of America.
3. Georgetown University.
4. George Washington University.
5. Howard University.
6. University of Maryland.

## C. Government agencies.

1. Commissioners' Offices.
2. Commissioners' Youth Council.
3. Department of General Administration.
4. Department of Public Health.
5. Department of Public Welfare.
6. Department of Vocational Rehabilitation.
7. Metropolitan Police Department.
8. National Capital Housing Authority.
9. Office of Urban Renewal.
10. Public Library.
11. Public Schools.
12. Recreation Department.
13. The Juvenile Court of the District of Columbia.
14. U.S. Employment Service for the D.C.

Additional organizations may be represented on the Committee, from time to time, in order to insure maximum community support of the planning and action programs.

## PART IV

*Terms of appointment.*—A. Terms of appointment of members shall continue until such time as the permanent organizational structure needed for effective planning and action programs is determined and established, at which time all appointments shall automatically expire and the Committee shall be abolished.

B. Alternate representatives may be designated, at the discretion of the organization or member representing an organization. However, such matters as voting privileges will be restricted to one vote per organization represented.

## PART V

*Compensation.*—Members shall serve without compensation.

## PART VI

*Organization.*—A. The Committee shall be initially composed of a Chairman, three Associate Vice Chairmen, and a Secretary, to be elected by simple majority of Committee members present and voting at its initial meeting. These five elected officers shall comprise the Executive Board of the full Committee. The Executive Board may be expanded to include additional members, elected at large, in the discretion of the membership.

B. The Chairman, upon the advice and consent of the Executive Board, may appoint such subcommittees as are considered necessary to fulfill the purpose and functions of the Committee.

## PART VII

*Secretarial service.*—Secretarial services shall be provided from the planning staff which is responsible to the President's Committee.

## ORGANIZATION ORDER NO. 133

[There is no material for this organization order, since it was vacated before publication. However the number has been reserved for future material.]

## ORGANIZATION ORDER NO. 134.—ADVISORY COUNCIL ON VOCATIONAL REHABILITATION

Organization Ord. No. 134, 62-1959, Oct. 11, 1962, ordered that:

## PART I

A. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Advisory Council on Vocational Rehabilitation.



**B. Functions.**—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Vocational Rehabilitation, with respect to the following:

1. Policy and operational aspects of the vocational rehabilitation program of the District of Columbia. The Council shall make such recommendations as it may deem appropriate with respect to matters affecting the vocational rehabilitation program; keeping appropriate District officials informed of the reactions of those segments of the public affected by or interested in the vocational rehabilitation program; and providing leadership among organizations and the public at large to create understanding of the program and to enlist cooperation in its implementation.

2. Fees for rehabilitation services provided to the Department's clients.

3. Interpretation of the varied medical, occupational, and other aspects of the vocational rehabilitation program for interested citizens.

4. Provision of the leadership necessary for members of medical and related professional groups to understand the program.

5. Such recommendations as it may deem appropriate with respect to rehabilitation matters affecting the program; and

6. Provision of adequate in-service staff training in rehabilitation understanding for the staff of the Department.

**C. Composition and Membership:**

1. The Advisory Council on Vocational Rehabilitation shall consist of fifteen (15) members in addition to three ex officio members who shall be the Chairman of the Commissioners' Committee on Employment of the Physically Handicapped, and the two medical Consultants to the Director, Department of Vocational Rehabilitation. Members shall be chosen on the basis of their experience, reputation, or demonstrated interest in the field of vocational rehabilitation of the physically handicapped.

2. Members shall be appointed by the Board of Commissioners after consideration of nominations made by the Director, Department of Vocational Rehabilitation, and such other sources as they may consider appropriate.

**D. Terms of Appointment:**

1. Members shall hold office for terms of three years, except that of the initial appointments of members following the effective date of this Order, one-third shall serve for one year, such terms to expire October 31, 1963; one-third for two years, such terms to expire October 31, 1964; and one-third for three years, such terms to expire October 31, 1965. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

2. If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

**E. Compensation.**—Members shall serve without compensation.

**F. Organization.**—At the initial meeting each year following the appointment of new members, the Council shall elect from among its members such officers as it deems necessary. All meetings of the Council will be on call of the Chairman, who shall call at least one meeting during each quarter of each fiscal year.

**PART II**

**Effective date.**—This Order shall be effective on and after October 11, 1962.

**ORGANIZATION ORDER NO. 135.—COMMISSIONERS' ADVISORY COMMITTEE ON PHYSICAL THERAPY**

Organization Ord. No. 135, 62-2144, Nov. 15, 1962, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Physical Therapy.

**PART I**

**Purpose.**—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 87-280 pertaining to the licensing of physical therapists in the District of Columbia, which shall become effective February 20, 1963.

**PART II**

**Functions.**—A. The Committee shall consider the following matters and advise the Commissioners thereon:

- (1) The promulgation of regulations designed to implement Public Law 87-280.

- (2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of physical therapists in the District of Columbia.

- (3) The establishment of policies and procedures pertaining to the licensing of physical therapists in the District of Columbia.

- (4) The issuance of by-laws pertaining to the functions and activities of the District of Columbia Physical Therapists Examining Board to be established pursuant to Public Law 87-280.

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 87-280 as directed or requested by the Commissioners.

**PART III**

**Composition.**—The Committee shall consist of three members appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Committee shall be of outstanding ability. They shall be currently practicing as physical therapists in the District of Columbia, with at least five years experience in physical therapy.

**PART IV**

**Term of Office.**—All appointments of members to the Committee shall expire as of midnight February 19, 1963, at which time the Committee shall be abolished.

**PART V**

**Compensation.**—Members shall serve without compensation.

**PART VI**

**Oath of Office.**—Members shall take an oath of office as follows:

"I, \_\_\_\_\_, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Physical Therapy, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

**PART VII**

**Organization.**—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization, select its own officers, and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

**ORGANIZATION ORDER NO. 136.—CITIZENS COUNCIL FOR THE DISTRICT OF COLUMBIA**

Organization Ord. No. 136, 62-2262, December 4, 1962, ordered that:

Reorganization Order No. 2, dated July 1, 1952, as amended, is hereby redesignated Organization Order No. 136, and amended to read as follows:

**PART I**

Citizens Council for the District of Columbia. There is hereby established a permanent committee of citizens to be known as the Citizens Council for the District of Columbia.



## PART II

*Purpose.*—The purpose of the Council is to increase citizen participation in the municipal government and to act in an advisory capacity to the Commissioners on matters affecting the general public.

## PART III

*Functions.*—The Council shall:

1. Advise the Board of Commissioners on such matters as the Commissioners request.
2. Advise the Board of Commissioners on other matters as the Council itself considers appropriate.
3. Assist the Board of Commissioners in interpreting District Government programs to the public.

## PART IV

*Composition.*—The Council shall consist of not more than twenty-five (25) members, who shall be residents of the District of Columbia, selected by the Board of Commissioners on the basis of personal qualification. Members shall hold no full-time office for which compensation is paid from funds of the District of Columbia.

## PART V

*Terms of Office.*—Members shall hold office for terms of three years, except that, of the initial appointment of additional and new members following the effective date of this Order, six (6) shall serve until June 30, 1963, six (6) until June 30, 1964, and five (5) until June 30, 1965. The eight (8) incumbent members of the Council shall continue to serve the unexpired portion of their terms. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

## PART VI

*Oath of Office.*—Members shall take an oath of office as follows:

"I, \_\_\_\_\_, having been duly appointed by the Board of Commissioners as a member of the Citizens Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

## PART VII

*Compensation.*—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated herein.

## PART VIII

*Organization.*—The Secretary to the Board of Commissioners shall serve as the Secretary to the Council, but shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization and name its own officers, provided that the internal standing Committee organization generally shall correspond to the functional grouping of the three Commissioners; and any subcommittee organization generally shall correspond to the major District Government departments and agencies. The Council shall meet at least once a month. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

## PART IX

*Administration.*—The Secretary to the Board of Commissioners is responsible for the files and housekeeping activities of the Council, and will provide the necessary stenographic and clerical services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be paid for from appropriate District funds.

## PART X

*Reports.*—The Council in its discretion is hereby authorized to release to the press and to the public generally,

before reporting thereon to the Commissioners, the reports and recommendations of the Council on matters on which action has been taken, except in those instances where otherwise requested by the Commissioners.

## ORGANIZATION ORDER NO. 137.—PUBLIC WELFARE ADVISORY COMMITTEE ON DAY CARE

Organization Ord. No. 137, 63-999, Apr. 18, 1963, as amended May 14, 1963, ordered that:

Pursuant to Public Law 87-543, approved July 25, 1962, there is hereby created in the Government of the District of Columbia a committee of citizens and government officials, representing agencies concerned with day care or day care services and professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care, to be known as the Public Welfare Advisory Committee on Day Care.

## PART I

*Purpose.*—The purpose of the Committee is to increase citizen participation in the municipal government's public welfare program and to act in an advisory capacity to the Director of Public Welfare on all matters of general policy involved in the provision of day care services under the District plan.

## PART II

*Functions.*—The Public Welfare Advisory Committee on Day Care shall advise the Director of Public Welfare in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new departmental policies and programs, or changes in existing departmental policies and programs, affecting provision of day care services in the District of Columbia.
2. Advise on community day care needs and the formulation and execution of long-range plans necessary to satisfy those needs.
3. Advise in coordinating the programs and activities of the Department of Public Welfare with those of community groups and private and nonprofit organizations.
4. Advise in the development of resources and the establishment of standards for day care services in the District of Columbia.

## PART III

*Composition.*—The Committee shall consist of not more than twenty-seven (27) members, nor less than a number divisible by three, appointed by the Board of Commissioners on the basis of their personal qualifications and demonstrated interest and leadership in the field of day care. The Committee shall include at least two representatives of the Department of Public Welfare, one representative of the Department of Public Health and one representative of the Board of Education. Such other appointment shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the day care needs of the community.

## PART IV

*Term of Office.*—The terms of office of members of the Committee shall be three years, except that, of the persons first appointed as members of said Committee, one-third of them shall be appointed for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

## PART V

*Compensation.*—Members shall serve without compensation.

## PART VI

*Organization.*—The Committee shall elect its own chairman and otherwise determine its own organization and designate its own officers. Secretarial services shall be furnished by the Department of Public Welfare.

ORGANIZATION ORDER NO. 138.—LABOR-MANAGEMENT  
ADVISORY COMMITTEE TO D.C. APPRENTICESHIP  
INFORMATION CENTER

Organization Ord. No. 138, 63-1552, June 25, 1963,  
ordered that:

There is hereby created in the District of Columbia a  
Labor-Management Advisory Committee to the D.C. Ap-  
prenticeship Information Center.

PART I

*Purpose.*—The purpose of the Committee shall be to  
serve in an advisory capacity to the D.C. Apprenticeship  
Information Center in promoting equal opportunity in  
apprenticeship and training in the District of Columbia.

PART II

*Functions.*—

1. The Committee shall furnish advice on the follow-  
ing matters:

(a) Ways and means of locating apprenticeship job  
openings and qualified applicants for testing, counsel-  
ing and referral, by the Center, to available jobs.

(b) Development of a cadre of group leaders who  
understand the apprenticeship program and who can  
provide leadership among minority groups in resolving  
apprenticeship problems.

(2) The Committee shall serve as a source of contact  
between employer and labor representatives of the ap-  
prenticeable trades, community leadership who are pro-  
moting equal opportunity in apprenticeship training,  
and the Department of Labor personnel who have staff  
responsibility for the Center's operation.

PART III

*Composition.*—The Committee shall consist of ten (10)  
members appointed by the Board of Commissioners, four  
(4) representing labor, four (4) representing manage-  
ment, and two (2) representing the public, provided  
that at least one member representing labor and one  
member representing management shall be appointed  
from among the members of the D.C. Apprenticeship  
Council.

PART IV

*Terms of Office.*—The initial term of office of members  
shall be for one year. Thereafter the terms of office  
of members of the Committee shall be three years, except  
that, of the persons first appointed at that time as mem-  
bers, one-third shall be appointed for one year, one-third  
for two years, and one-third for three years. Should a  
vacancy occur through the death, incapacity, removal,  
or resignation of a member, a successor shall be appointed  
to complete the unexpired term of the member. After the  
expiration of his term each member shall continue to  
serve until his successor is appointed and has qualified.  
No person who has served six years or more consecutively  
as a member shall be reappointed as a member until after  
the expiration of one year from the end of such service.

PART V

*Compensation.*—Members shall serve without additional  
compensation.

PART VI

*Organization.*—The Committee shall elect its own chair-  
man and otherwise determine its own officers. The Secre-  
tary of the D.C. Apprenticeship Council shall serve as  
permanent Secretary to the Committee.



## TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap.	Sec.
2A. Human Tissue Banks.....	2-251

### Chapter 1.—HEALING ARTS PRACTICE

Sec.	
2-103. Commission on licensure—Creation—Seal.	
2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.	
2-141. Delegation of functions of "Commission"—Definition.	

#### § 2-103. Commission on licensure—Creation—Seal.

##### CODIFICATION

The second paragraph of this section as set out in the main volume of this code is comprised of section 5 of the act of Feb. 27, 1929, 45 Stat. 1327, ch. 352. Section 1 of the act of Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248 [set out in section 2-103a] amends section 5 by inserting (a) immediately before the first word of the section and by adding a subsection (b) thereto. For the sake of clarity it is deemed advisable to separate section 5, as amended, from this section of the Code and transfer it to section 2-103a in this supplement.

#### § 2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

(a) The Commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The Commission may redetermine from time to time the standing of any school or hospital and may revise its register accordingly. The Commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this chapter: *Provided*, That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 2-120.

(b) Notwithstanding the requirements of the preceding subsection relating to registration, in the case of persons presenting evidence of graduation from a medical school or training in a hospital not located in the United States, the commission is authorized to accept certificates from the Educational Council for Foreign Medical Graduates or other organizations approved by (1) the American Medical Association, (2) the Association of American Medical Colleges, (3) the Federation of State

Medical Boards, and (4) the American Hospital Association as being qualified to examine and evaluate the professional skill, training, and qualifications of graduates of foreign medical schools, such certificates to show that the applicants have successfully qualified under an American Medical Qualification Examination of such Educational Council for Foreign Medical Graduates, or an examination comparable in form and comprehensive coverage of subject matter to an American Medical Qualification Examination. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 1.)

##### AMENDMENT

1961—Sec. 1, act Sept. 14, 1961, inserted (a) before the first word of the first paragraph and added subsection (b) thereto. The first paragraph is transferred from section 2-103 of the Code. See note to section 2-103.

#### § 2-122. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has been graduated from a professional school registered under this chapter; with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this chapter: *Provided*, That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act, and if the commission shall so find, such applicant shall be admitted to examination: *Provided further*, That an applicant who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has completed his training in a registered hospital, may be admitted to examination; but no license shall be



issued to any such applicant until after he has been graduated from a registered school: *Provided further*, That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this chapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further*, That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further*, That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this chapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the Commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the Commission and thereafter studied midwifery in a school of midwifery registered under this chapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat. 1336, ch. 352, § 26; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 2.)

#### AMENDMENT

1961—Section 2, act Sept. 14, 1961, amended section by (a) striking "studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this Act [this chapter], and has been graduated by such a school", and inserting in lieu thereof "been graduated from a professional school registered under this Act" [this chapter]; and (b) by inserting immediately after "*Provided*," where it first appears in the section the following: "That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act [this chapter] at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this

section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act [this chapter], and if the commission shall so find, such applicant shall be admitted to examination: *Provided further*,".

The section as so amended is set out above.

#### § 2-129. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

\* \* \* \* \*

On the petition of an applicant to whom a license or registration has been denied by the commission by virtue of this section, the action of the commission may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 2.)

#### AMENDMENT

1963—Section 2 of act Dec. 23, 1963, amended the seventh sentence of the section to read as above set out.

#### § 2-141. Delegation of functions of "Commission"—Definition.

Wherever the term "commission" is used in this chapter, such term shall mean the office or agency to which the Board of Commissioners of the District of Columbia, pursuant to the authority contained in Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), has delegated or may from time to time delegate the functions required to be performed by this chapter. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 50, as added, Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-248, § 3.)

### Chapter 2A.—HUMAN TISSUE BANKS

#### Sec.

- 2-251. Statement of policy and purpose.
- 2-252. Definitions.
- 2-253. Tissue bank licenses and regulations.
- 2-254. Penalties.
- 2-255. Donation of tissue.
- 2-256. Tissue donations by those having right to body.
- 2-257. Persons entitled to the body.
- 2-258. Office of the Coroner.
- 2-259. Exemption of licensed undertakers and Anatomical Board.
- 2-260. Coordination of act with reorganization plan No. 5.

#### § 2-251. Statement of policy and purpose.

Because of the rapid medical progress in the field of tissue preservation, tissue transplantation, and tissue culture, and because it is in the public interest to aid the development of this field of medicine, it is the policy and purpose of Congress in enacting this chapter and the amendments to sections 27-119a and 27-125 to encourage and aid the development of reconstructive medicine and surgery and the development of medico-surgical research by providing for the licensing and regulation of tissue banks, and by facilitating antemortem and postmortem authorizations for donations of tissue. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87-656, § 2.)

#### EFFECTIVE DATE

Section 14 of act Sept. 10, 1962, provides, "This Act [set out as Title 2, Chapter 2A, and sections 27-119a and 27-125] except section 4 [2-253] shall take effect upon

approval. Section 4 [2-253] shall take effect 60 days after the Commissioners have initially promulgated regulations pursuant to such section."

#### POPULAR NAME

Act Sept. 10, 1962, provided that "This Act [set out as Title 2, Ch. 2A, and as amendments to sections 2-119a and 27-125] may be cited as the 'District of Columbia Tissue Bank Act'".

#### CROSS REFERENCES

For other applicable provisions relating to disposition of dead bodies, see §§ 2-201 to 2-209, and §§ 27-101 to 27-131.

#### § 2-252. Definitions.

For the purposes of this chapter and sections 27-119a and 27-125, except where the context indicates a different meaning—

"Commissioners" means the Commissioners of the District of Columbia or their designated agent.

"Donor" means any person who, in accordance with the provisions of this chapter and sections 27-119a and 27-125, bequeaths or donates his tissue for removal after death in furtherance of the purposes of this chapter and section 27-119a and 27-125, and also means any deceased person whose tissue is donated or disposed of for the purpose of this chapter and sections 27-119a and 27-125.

"Tissue" means any portion of the body of a dead human.

"Tissue bank" means a facility for procuring, removing, and disposing of portions of bodies of dead humans for the purposes of reconstructive medicine and surgery, and research and teaching in reconstructive medicine and surgery. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87-656, § 3.)

#### EFFECTIVE DATE

See note to section 2-251.

#### § 2-253. Tissue bank licenses and regulations.

(a) No person shall operate any tissue bank in the District of Columbia without a valid license issued pursuant to this chapter and sections 27-119a and 27-125. No such license shall be issued except to persons duly licensed or duly registered as physicians under the Healing Arts Practice Act of the District of Columbia or to persons holding valid licenses to operate and maintain hospitals for humans pursuant to the Act entitled "An Act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia", approved April 20, 1908.

(b) The Commissioners are authorized, after public hearing, to adopt and promulgate rules and regulations prescribing, without limitation, (1) the terms and conditions under which a tissue bank license may be issued and renewed; (2) the fees to be paid for the issuance and renewal of such licenses; (3) the duration of such licenses; (4) the grounds for suspension and revocation of such licenses; (5) the operation of tissue banks; (6) the conditions under which tissue may be processed, preserved, stored, and transported; and (7) the making, keeping, and disposition of records by tissue banks or by other persons processing, preserving, storing, or transporting tissue.

(c) The Commissioners may, after notice and hearing, deny, suspend, or revoke any tissue bank

license issued or applied for pursuant to this chapter and sections 27-119a and 27-125.

(d) Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any tissue bank license or renewal thereof, issued or applied for under this chapter and sections 27-119a and 27-125, may obtain a review of such decision or order in the municipal court of appeals for the District of Columbia, and may seek review by the United States Court of Appeals for the District of Columbia of any judgment of the municipal court of appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11-772.

(e) Except with respect to the provisions as to licensing, the provisions of this chapter and sections 27-119a and 27-125, and the regulations made pursuant thereto, shall apply to Federal agencies situated in the District of Columbia, and to District of Columbia agencies. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87-656, § 4.)

#### REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out as chapter 1 in Title 2 of the D.C. Code and the act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia approved Apr. 20, 1908, is set out in sections 32-301 to 32-305.

#### CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

Act Oct. 23, 1962, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia, to "District of Columbia Court of Appeals".

#### EFFECTIVE DATE

See note to section 2-251.

#### § 2-254. Penalties.

Any person violating any provision of this chapter and the amendments to sections 27-119a and 27-125, or any regulation made pursuant to this chapter and the amendments to sections 27-119a and 27-125, shall be fined not more than \$300, or be imprisoned for not more than ninety days. Prosecution for violations of this chapter and the amendments to sections 27-119a and 27-125 and regulations made pursuant thereto shall be brought in the name of the District of Columbia. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87-656, § 5.)

#### EFFECTIVE DATE

See note to section 2-251.

#### § 2-255. Donation of tissue.

(a) Any person who, under the law of the District of Columbia, has capacity to make a valid will, may by will, codicil, or any written statement donate his tissue for the purposes of this chapter and sections 27-119a and 27-125. Any person who, in accordance with this chapter and sections 27-119a and 27-125, donates his tissue may, but shall not be required to, designate the purpose for which his tissue is to be used. Any physician or hospital validly operating a tissue bank shall have full authority to take the tissue so donated and use the same for the purposes enumerated in this chapter and section 27-119a and 27-125.



(b) No particular words shall be required for such person to donate his tissue, but any will, codicil, or written statement shall be liberally construed to effectuate the intent and purpose of the person desiring to donate his tissue for any purpose authorized by this chapter and sections 27-119a and 27-125. If, pursuant to this section or section 2-256, a person donates tissue by a written statement other than by a will or codicil, such statement shall be signed by him and be witnessed by two persons of legal age.

(c) A provision in any will, codicil, or written statement which donates tissue as provided by this chapter and sections 27-119a and 27-125 shall become effective immediately upon the death of the testator or donor, and shall constitute the authority for any physician or hospital validly operating a tissue bank to remove said tissue. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87-656, § 6.)

## EFFECTIVE DATE

See note to section 2-251.

## § 2-256. Tissue donations by those having right to body.

Any person having the right to a body for the purpose of burial may by a written statement donate any tissue from such body to any tissue bank, and in such written statement may designate the purpose or purposes for which such tissue is to be used. Such writing shall constitute full authority for the tissue bank to use such tissue for the purposes of this chapter and sections 27-119a and 27-125. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 7.)

## EFFECTIVE DATE

See note to section 2-251.

## § 2-257. Persons entitled to the body.

For the purposes of this chapter and the amendments to section 27-119a and 27-125, the order of priority in which persons are entitled to the body for burial and who may donate tissue therefrom shall be the following:

(a) The surviving spouse.

(b) If there be no surviving spouse, or if the surviving spouse is incompetent, unavailable, or does not claim the body for burial, then an adult child, a parent, an adult brother, or an adult sister of the decedent. Any one of such persons may make such donation: *Provided*, That tissue shall not be removed pursuant to a donation made by any one of such persons designated in this subsection if, before such tissue is removed, any one of such persons shall, in writing, notify the tissue bank which is to remove the tissue that he objects to such removal.

(c) Any person whom the deceased during his lifetime designated by written instrument to take charge of his body for burial.

(d) The person or agency who or which assumes custody of the body for burial, in any case in which the person designated as provided in paragraph (c) or all of the persons mentioned in paragraph (a) or (b) of this section have failed to claim the body. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 8.)

## EFFECTIVE DATE

See note to section 2-251.

## § 2-258. Office of the Coroner.

(a) The Commissioners are authorized to appoint such number of licensed physicians as they deem appropriate to perform such of the functions of the Coroner of the District of Columbia as the Commissioners shall prescribe. The Commissioners are authorized to fix the compensation of such physicians at a rate or rates not in excess of the per diem equivalent of the maximum rate for grade 18 of the General Schedule of the Classification Act of 1949, as amended. The Commissioners are further authorized, in their discretion, to accept the services of such physicians without compensation.

(b) The Coroner of the District of Columbia may, in his discretion, allow tissue to be removed from any dead human body in his custody or under his jurisdiction: *Provided*, That such tissue removal shall not interfere with other functions of the Office of the Coroner: *Provided further*, That the person who, in accordance with section 2-257, is entitled to the body for burial, shall first authorize such tissue removal. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 9.)

## REFERENCE IN TEXT

The Classification Act of 1949 is classified generally to Chapter 21, Title 5, U.S. Code.

## EFFECTIVE DATE

See note to section 2-251.

## CROSS REFERENCES

For other provisions relating to the Coroner, see sections 11-1201 to 11-1208 and 1 App., Reorg. Ord. No. 51.

## § 2-259. Exemption of licensed undertakers from act.

Nothing in this chapter and sections 27-119a and 27-125 shall be construed (1) to prohibit undertakers licensed pursuant to section 47-2344a from discharging their duties, or (2) to prohibit or affect in any way the authority, duties, rights, or obligations vested, imposed, or granted by the Act entitled "An Act for the promotion of anatomical science and to prevent the desecration of graves in the District of Columbia", approved April 29, 1902. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 12.)

## REFERENCE IN TEXT

The act for the promotion of anatomical science, etc., approved Apr. 29, 1902, is set out in Title 2, chapter 2, of the D.C. Code.

## EFFECTIVE DATE

See note to section 2-251.

## § 2-260. Coordination of act with reorganization plan No. 5.

Nothing in this chapter and sections 27-119a and 27-125 shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter and sections 27-119a and 27-125 in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 13.)

## REFERENCE IN TEXT

Reorganization Plan No. 5 of 1952, referred to in text, is set out in the Appendix to Title I.

## EFFECTIVE DATE

See note to section 2-251.

## Chapter 4.—NURSES AND PHYSICAL THERAPISTS

## SUBCHAPTER I.—REGISTERED NURSES

## SUBCHAPTER III.—PHYSICAL THERAPISTS

Sec.

- 2-451. Definitions.
- 2-452. Exemption from registration.
- 2-453. Registration.
- 2-454. Powers of Commissioners.
- 2-455. Establishment of Board.
- 2-456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.
- 2-457. Registration of qualified applicants—Issuance of certificates.
- 2-458. Registration without examination.
- 2-459. Registration after examination.
- 2-460. Reciprocity.
- 2-461. Renewal of registration—Nonpracticing therapists.
- 2-462. Denial, revocation, and suspension of registration.
- 2-463. Court review.
- 2-464. Unauthorized practice of physical therapy.
- 2-465. Practice of registered physical therapists.
- 2-466. Enforcement—Penalties.
- 2-467. Conduct of prosecutions.
- 2-468. Fees and charges—Public hearings to change fees.
- 2-469. Severability.
- 2-470. Appropriations.
- 2-471. Reorganization.
- 2-472. Effective date.

## SUBCHAPTER I.—REGISTERED NURSES

## § 2-404. Registration — Application — Requirements — Registration of training schools.

Every nurse desiring to register in the District of Columbia shall make application to the Nurses' Examining Board for examination and registration, and at the time of making such application shall pay to the treasurer of said Board \$15. Said applicant must furnish satisfactory evidence that she is over nineteen years of age, or that she will attain the age of nineteen years within six months after the date fixed for the necessary examination to be held by said Board after the date of such application. Except as otherwise provided in this subchapter, an applicant shall not be registered unless she has passed an examination by the Nurses' Examining Board. No nurse shall be registered in the District of Columbia who has not attained the age of nineteen years. Said applicant must also furnish satisfactory evidence of good moral character, and further that she holds a diploma from training school for nurses which has been registered by the Nurses' Examining Board of the District of Columbia: *Provided, however,* That no training school shall be registered which does not maintain proper educational standards and give not less than two years' training in a general hospital, or in a special hospital with adequate affiliations, all of which shall be determined by the Nurses' Examining Board. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 4; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 4; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 1; July 30, 1963, 77 Stat. 114, Pub. L. 88-81, § 1.)

## AMENDMENTS

1963—Act July 30, 1963, amended the section by striking "twenty-one" wherever the same appears and inserting in lieu thereof, "nineteen". This amendment reduces the age limitation from "twenty-one" to "nineteen".

## § 2-406. Annual registration—Nurses—Training schools—Cancellation by failure to register—Restoration.

\* \* \* \* \*

On the petition of an applicant to whom registration or reregistration has been denied by the nurses' examining board, the action of the board may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 3.)

## AMENDMENT

1963—Section 3 of act Dec. 23, 1963, amended the section by striking the colon at the end of the first proviso and changing it to a period and striking out the second proviso and inserting in lieu thereof the matter above set out starting with the words "On the petition".

## SUBCHAPTER II.—PRACTICAL NURSES

## § 2-425. Commissioners authorized to delegate functions.

## TRANSFER OF FUNCTIONS

Reorganization Order No. 59 of the Board of Commissioners, dated June 30, 1953, as amended, established within the Department of Occupations and Professions, a Practical Nurses' Examining Board. There was delegated to said Examining Board the technical and professional functions vested in the Commissioners by sections 2-427 to 2-431 and section 2-433. The administrative functions authorized to be performed by such sections were delegated to the Director. The functions of adopting and prescribing rules and regulations were reserved to themselves by the Commissioners. The order is set out in the appendix to title 1.

## § 2-429. Conditions for issuance of license without written examination.

## NOTES TO DECISIONS

Application under "grandfather clause" 1  
Experience requirement 2  
Findings of fact 3  
Timeliness of petition 4

## 1. Application under "grandfather clause"

Even though statute did not in express terms require that formal hearing be held when application for license as practical nurse was made under "grandfather clause", an application which substantially complied with statutory provisions could not be denied unless applicant had clear opportunity to meet Board's challenge to her qualifications and unless court was apprised of basis of finding against applicant; and while procedure of Board could be informal, it would have to conform to recognized standards of fairness, and record would have to be made which would permit review of Board's action by court. *C. Corbett v. L. Kinlein et al.* (D.C. App. 1963, 191 A. 2d 246).

## 2. Experience requirement

The statement of practical nurses' examining board that 9 months' nursing experience satisfied the 1-year experience requirement for issuance of license did not provide reasonable basis in law for board's decision denying license to one who had almost 7 months' experience. *M. E. Matheson v. Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

## 3. Findings of fact

Where an informal hearing is held and practical nurses' examining board denies application for license, there can be judicial review only if board has made findings of fact and has applied the regulations to such facts and has



issued an order based on facts and regulations. *M. E. Matheson v. Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

#### 4. Timeliness of petition

Petition to review practical nurses' examining board's denial of application for license was timely filed within court rule requiring petition for review to be filed within 15 days of formal notice of final order or decision of a board or commission, where petitioner had no formal notice after February 19 informal meeting that her application had been rejected, petitioner's alternative ground for granting license was rejected in board's letter of April 29, and petition for review was filed on May 10. *M. E. Matheson v. Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

### SUBCHAPTER III.—PHYSICAL THERAPISTS

#### § 2-451. Definitions.

As used in this subchapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board, or their authorized agent or agents.

(b) The word "she" and the derivatives thereof shall be construed to include the word "he" and the derivatives thereof.

(c) The term "physical therapy" means the treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. Nothing in this subchapter shall be construed as authorizing a physical therapist, whether registered or not, to practice medicine, osteopathy, chiropractic, naturopathy, or any other form or method of healing.

(d) The term "physical therapist" means a person who practices physical therapy under the prescription, supervision, and direction of a person licensed to practice under the Healing Arts Practice Act of the District of Columbia, approved February 27, 1929 (45 Stat. 1326), as amended.

(e) The word "State" or "States" shall be deemed to include any territory of the United States and the Commonwealth of Puerto Rico. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 2.)

#### REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia, referred to in the text, is set out in title 2, ch. 1, of the D.C. Code.

#### EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering this subchapter, see section 2-472.

#### SHORT TITLE

Section 1 of act Sept. 22, 1961, provided that: "This Act [this subchapter] may be cited as the 'Physical Therapists Practice Act'".

#### § 2-452. Exemption from registration.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof while such person is acting in the discharge of her official duties. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 3.)

#### EFFECTIVE DATE

See section 2-472.

#### § 2-453. Registration.

(a) No person shall practice physical therapy in the District of Columbia unless (1) she is duly regis-

tered in accordance with the provisions of this subchapter, or (2) is exempted from such registration by the terms of this subchapter.

(b) No person not registered in accordance with the provisions of this subchapter, unless exempted from registration by the terms of this subchapter, shall, directly or indirectly, (1) represent herself to be so registered or (2) represent herself to be certified, licensed, or authorized to practice physical therapy.

(c) No person shall use in connection with her name the words "physical therapist", "physio-therapist", "physical therapy technician", or use the initials "P.T.", "P.T.T.", "R.P.T.", or any other letters, words, abbreviations, or insignia indicating or implying that she is a registered physical therapist, unless such person is a holder of a valid registration under this subchapter.

(d) Nothing in this section shall prohibit any person duly licensed or registered in the District of Columbia under any other Act from engaging in the practice for which she is duly registered or licensed.

(e) Nothing in this subchapter shall apply to any person licensed under the Healing Arts Practice Act of the District of Columbia, nor to any employee of any such person working under his immediate supervision and direction in his private office, provided no such employee shall hold herself out, or otherwise represent herself to be a physical therapist. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 4.)

#### REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in title 2, ch. 1, of the D.C. Code.

#### EFFECTIVE DATE

See section 2-472.

#### § 2-454. Powers of Commissioners.

The Commissioners are hereby vested with full power and authority to delegate, from time to time, to their designated agent or agents, any of the functions vested in them by this subchapter. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 5.)

#### EFFECTIVE DATE

See section 2-472.

#### § 2-455. Establishment of board.

The Commissioners may establish a physical therapists examining board to perform any of the functions vested in the Commissioners by this subchapter, and, if so established, such board shall be composed of such persons possessing such qualifications as the Commissioners shall determine. The Commissioners are authorized to prescribe the terms of office of members of such board and to fix the compensation of such members. The Commissioners may appoint as members of such board, Federal and District government employees, and such members shall not be entitled to receive compensation as board members, and any such member shall not be debarred by such membership from employment in the Federal or District governments not inconsistent with her duties as a board member. Any board member may receive her compensation as a board member as well as any retirement pay, retirement compensation, or annuity to which she may be entitled on account of previous service rendered to the

United States or the District of Columbia governments. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 6.)

#### EFFECTIVE DATE

See section 2-472.

### § 2-456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necessary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall maintain a register of all persons registered as physical therapists. The Commissioners shall maintain a register of approved schools which they deem afford adequate training in physical therapy.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the municipal court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11-756(c). (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 7.)

#### CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions."

#### EFFECTIVE DATE

See section 2-472.

### § 2-457. Registration of qualified applicants—Issuance of certificates.

The Commissioners shall register as physical therapists all applicants who prove to the satisfaction of the Commissioners their fitness for registration under the terms of this subchapter. The Commissioners shall issue to each person registered a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent herself as a registered physical therapist, and authorized to practice as such under this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 8.)

#### EFFECTIVE DATE

See section 2-472.

### § 2-458. Registration without examination.

The Commissioners shall register as a physical therapist, without examination, any physical ther-

pist who is at least twenty years of age and of good moral character and who presents evidence satisfactory to the Commissioners that she was, prior to the effective date of this subchapter, practicing physical therapy in the District of Columbia for a period of two years immediately preceding the effective date of this subchapter, and that she (1) has graduated from an approved school of physical therapy listed in the register of approved schools or (2) received comparable training or experience in the practice of physical therapy as determined by the Commissioners. Application for registration under this section shall be made on or before the expiration of one year from the effective date of this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 9.)

#### EFFECTIVE DATE

See section 2-472.

### § 2-459. Registration after examination.

The Commissioners shall pass upon the qualifications of applicants for registration, provide for and conduct all examinations, determine which applicants have successfully passed the examination and duly register such applicants. To be eligible to be examined for registration as a physical therapist, an applicant must meet the following requirements:

(a) Be at least twenty years old.

(b) Be of good moral character.

(c) Be in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia.

(d) Be a graduate of an approved school of physical therapy listed in the register of approved schools; or possess comparable educational qualifications as determined by the Commissioners.

The examinations specified in this section shall be conducted at such times and places as the Commissioners may determine, and notice of time and place of such examination shall be published not less than thirty days before the first day of each examination in one or more newspapers of local circulation.

The examination shall embrace such coverage of the following subjects to determine the applicant's qualification: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, physics; "physical therapy" as defined in this subchapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of "physical therapy" as defined in this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 10.)

#### EFFECTIVE DATE

See section 2-472.

### § 2-460. Reciprocity.

Any applicant who has practiced physical therapy and has been registered, certified, or licensed as such in any State may, upon proof of good moral character, be registered without examination, provided the applicant has graduated from a school of physical therapy approved by the Commissioners, or has received competent comparable training as determined by the Commissioners. It is intended that the standards of education and training required for registration under this section shall be substantially



equivalent to those required for registration pursuant to section 2-459. This section shall be construed to apply only to candidates from States which admit registered physical therapists of the District of Columbia without examination. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 11.)

## EFFECTIVE DATE

See section 2-472.

### § 2-461. Renewal of registration—Nonpracticing therapists.

(a) Every registered physical therapist engaged in or who proposes to engage in the practice of physical therapy in the District of Columbia is hereby required to register with the Commissioners annually. Any registrant who allows her registration to lapse by failing to renew the registration annually may be reinstated by the Commissioners by showing cause satisfactory to the Commissioners for such failure and upon payment of all required fees. The Commissioners are authorized, after public hearing, to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Commissioners. Upon receipt of such notice, the Commissioners shall place the name of such person upon the nonpracticing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold herself out as a registered physical therapist nor practice as such in the District of Columbia. Application for renewal of registration and payment of renewal fee for the current year shall be made to the Commissioners by any such person desiring to resume practice as a registered physical therapist. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87-280, § 12.)

## EFFECTIVE DATE

See section 2-472.

### § 2-462. Denial, revocation, and suspension of registration.

The Commissioners are authorized and empowered to deny, revoke, or suspend any registration or certificate of renewal of registration issued by the Commissioners or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

- (1) has been guilty of fraud or deceit in procuring or attempting to procure any registration or renewal thereof provided for in this subchapter;
- (2) has been convicted of a crime involving moral turpitude;
- (3) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;
- (4) has been guilty of unprofessional conduct;
- (5) has willfully violated any of the provisions of this subchapter, or rules or regulations promulgated by the Commissioners pursuant to authority contained in this subchapter;
- (6) is mentally incompetent;
- (7) is guilty of undertaking to treat ailments of human beings other than by physical therapy as authorized by this subchapter, or the under-

taking to practice physical therapy independent of the prescription and direction of a person appropriately licensed to practice under the Healing Arts Practice Act of the District of Columbia; or (8) is otherwise professionally incapacitated.

*Provided*, That such denial, revocation, or suspension shall be made only upon specific charges in writing. A copy of any such charges and at least ten days' notice of the hearing of the same shall be mailed to the holder of or applicant for such registration, addressed to her at her last known address. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87-280, § 13.)

## REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia referred to in text is set out in title 2, ch. 1, of the D.C. Code.

## EFFECTIVE DATE

See section 2-472.

### § 2-463. Court review.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any registration, or renewal of registration, issued or applied for under this subchapter may obtain a review thereof in the municipal court of appeals for the District of Columbia, and may seek a review by the United States Court of Appeals for the District of Columbia Circuit of any judgment of the municipal court of appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11-772. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 14.)

## CHANGE OF NAME

Act Oct. 23, 1962, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia, to "District of Columbia Court of Appeals".

## EFFECTIVE DATE

See section 2-472.

### § 2-464. Unauthorized practice of physical therapy.

It shall be unlawful for any person in the District of Columbia to—

- (a) sell or fraudulently obtain or furnish any diploma, license, certificate of registration, or record required by this subchapter, or required by the Commissioners under authority of this subchapter, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;
- (b) practice physical therapy under cover of any diploma, certificate of registration, or record required by this subchapter or required by the Commissioners under authority of this subchapter, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent registration;
- (c) use in connection with her name any designation tending to imply that she is a registered physical therapist unless duly registered under provisions of this subchapter;
- (d) practice physical therapy during the time her registration shall be suspended or revoked.

(Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 15.)

## EFFECTIVE DATE

See section 2-472.

**§ 2-465. Practice of registered physical therapists.**

A person registered under this subchapter as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person duly licensed or registered under the Healing Arts Practice Act of the District of Columbia. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 16.)

**REFERENCE IN TEXT**

The Healing Arts Practice Act of the District of Columbia, is set out in title 2, ch. 1, of the D.C. Code.

**EFFECTIVE DATE**

See section 2-472.

**§ 2-466. Enforcement—Penalties.**

Any person who shall violate the provisions of section 2-453, 2-464, or 2-465 of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding \$500 or by imprisonment for not more than one year, or both. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 17.)

**EFFECTIVE DATE**

See section 472.

**§ 2-467. Conduct of prosecutions.**

(a) Prosecutions for violations of any provisions of section 2-453, 2-464, or 2-465 of this subchapter shall be conducted in the name of the District of Columbia in the municipal court for the District of Columbia, by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 18.)

**CHANGE OF NAME**

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

**EFFECTIVE DATE**

See section 2-472.

**§ 2-468. Fees and charges—Public hearings to change fees.**

(a) The Commissioners are authorized and empowered, after a public hearing, to fix and, from time to time increase or decrease, fees for any services rendered under this subchapter. The Commissioners shall, pursuant to this section, increase, decrease, or fix fees in such amounts as will, in the judgment of the Commissioners, approximate the costs to the District of Columbia of administering this subsection: *Provided*, That no fee shall be increased, decreased, or fixed except after a public hearing.

(b) Upon the change of a registration period as authorized by subsection (a) of section 2-461 the fee for registration or renewal of registration shall be prorated on the basis of the time covered.

(c) All moneys collected for fees and charges made pursuant to authority contained in this subchapter shall be paid into the Treasury to the credit of the District of Columbia. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 19.)

**EFFECTIVE DATE**

See section 2-472.

**§ 2-469. Severability.**

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 20.)

**EFFECTIVE DATE**

See section 2-472.

**§ 2-470. Appropriations.**

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 21.)

**EFFECTIVE DATE**

See section 2-472.

**§ 2-471. Reorganization.**

Nothing in this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 22.)

**EFFECTIVE DATE**

See section 2-472.

**§ 2-472. Effective date.**

This subchapter shall take effect one hundred and twenty days after funds are appropriated for the purpose of administering the provisions of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 23.)

**Chapter 6.—PHARMACY**

**§ 2-606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.**

\* \* \* \* \*

The board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code.

\* \* \* \* \*

(As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88-241, § 4.)



## AMENDMENTS

1963—Section 4 of act Dec. 23, 1963, amended the fourth paragraph of the section to read as above set out. It also struck out the fifth paragraph of the section.

## Chapter 7.—PODIATRY

## § 2-717. Practicing without a license—Violation of law—Penalties.

## NOTES TO DECISIONS

Judicial involvement 1  
Purpose of statute 2  
Separate prosecutions 3

## 1. Judicial involvement

Court's lengthy interrogation of defendant charged with practicing podiatry without license did not exceed permissible limits of judicial involvement. *T. DeW. Baldwin v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

## 2. Purpose of statute

Podiatry statute was enacted to protect public by assuring that those who hold themselves out as podiatrists have attained specified level of professional competence and one who fails to submit himself to scrutiny of Board of Podiatry Examiners must be considered unfit to practice podiatry, regardless of his claimed qualifications. *T. DeW. Baldwin v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

## 3. Separate prosecutions

District of Columbia's healing arts practice statute permits separate prosecution of isolated acts of treatment. *T. DeW. Baldwin v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

Each act of treatment by one practicing podiatry without license may be prosecuted as separate offense. *Id.*

## Chapter 8.—VETERINARIANS

## § 2-810. Revocation of licenses—Causes—Procedure—Appeals—Costs.

\* \* \* \* \*

Appeal from the decision of the board may be taken to the District of Columbia Court of Appeals, as provided by section 11-742, 17-303, 17-304, 17-305 (b), 17-306 and 17-307 of the District of Columbia Code. The Commissioners of the District of Columbia, the board of review, and the board of examiners in veterinary medicine shall not, nor shall any of them, be required to pay costs, or give bond or security on appeal, or other proceeding in any court of the District of Columbia growing out of any official duty imposed on them, or any of them, by this chapter. (As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88-241, § 5.)

## AMENDMENT

1963—Section 5 of act Dec. 23, 1963, amended the third sentence of the section to read as above set out.

## Chapter 10.—ARCHITECTS

## § 2-1028. Procedure for revocation—Appeal.

The proceedings for the annulment of registration, that is, the revocation of a certificate, shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects by the Board itself or by a complainant. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the accused at least thirty calendar days in advance of the hearing, which shall be postponed if necessary to give the requisite notice. Where personal services can not be made within the District of Columbia, service may be made by publication or personal service in ac-

cordance with such rules as the Board adopts, following generally and in principle the provisions of sections 13-336 to 13-338 and 13-340 of the District of Columbia Code. At the hearing, the accused may be represented by counsel, may introduced evidence, and may examine and cross-examine witnesses. The secretary of the Board may administer oaths. The Board shall make a written report of its findings, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding is adverse to the accused, his certificate of registration shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11-742, 17-303, 17-304, 17-305 (b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88-241, § 6.)

## AMENDMENT

1963—Section 6 of act Dec. 23, 1963, amended the section to read as above set out.

## Chapter 11.—BARBERS

## § 2-1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

\* \* \* \* \*

An appeal may be taken from the action of the Board to the District of Columbia Court of Appeals in the manner provided by sections 11-742, 17-303, 17-304, 17-305 (b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 7.)

## AMENDMENT

1963—Section 7 of act Dec. 23, 1963, amended the second paragraph of the section to read as above set out.

## Chapter 14.—PLUMBERS

## § 2-1405. License—Renewal, fee, revocation.

## NOTES TO DECISIONS

## 2. Immediate personal supervision

Administrative interpretation, by District of Columbia plumbing board secretary, that code provision requiring that plumbing work be done under a licensed plumber's immediate personal supervision did not necessitate his physical presence on the site was not clearly wrong and would be entitled to due respect of court interpreting the provision. *G. A. Cook v. James E. Griffith, Inc.* (D.C. App. 1963, 193 A. 2d 427).

Alleged failure of duly licensed corporation engaged in plumbing business to perform plumbing work in accordance with code provision requiring that all work by unlicensed persons be done under the immediate supervision of a licensed plumber did not relieve the contractor, which had engaged the corporation, from liability for the plumbing job which was otherwise properly performed. *Id.*

## Chapter 18.—PROFESSIONAL ENGINEERS

## § 2-1810. Exemptions.

## NOTES TO DECISIONS

Burden of proving exception 1  
Practice of engineering by corporation 2

## 1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information

allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

§ 2-1814. Penalties.

NOTES TO DECISIONS

Burden of proving exception 1  
Practice of engineering by corporation 2  
Violation question of fact 3

1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information

allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc., v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

3. Violation question of fact

Question whether use of name "T.V. Engineers Inc.," by corporation which employed no professional engineers, violated provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered, was factual determination for trial court. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).





## TITLE 3.—BOARD OF PUBLIC WELFARE

Chap.	Sec.
2. Public Assistance.....	3-201

### Chapter 2.—PUBLIC ASSISTANCE

Sec.
3-201. Definitions.
3-202. Categories and administration of public assistance.
3-203. Eligibility for public assistance.
3-204. Amount of public assistance.
3-205. Application for public assistance.
3-206. Investigation of applicant.
3-207. Award and payment of public assistance.
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3-209. Emergency public assistance.
3-210. Redetermination of grants.
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3-219. Payment of expenses.
3-220. Delegation of authority.
3-221. Voluntary services.
3-222. Appropriations.
3-223. Validity.

#### § 3-201. Definitions.

As used in this chapter, the word "District" means the District of Columbia; the word "Commissioners" means the Commissioners of the District of Columbia or the agents, agencies, officers, and employees designated by them to perform any function vested in them by this chapter; the term "public assistance" means payment in or by money, medical care, remedial care, goods or services to, or for the benefit of, needy persons; the word "recipient" means a person to whom or on whose behalf public assistance is granted and the word "State" includes Puerto Rico, Guam, and the Virgin Islands. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87-807, § 2.)

#### EFFECTIVE DATE

Section 27 of act Oct. 15, 1962, provides as follows: "Except as otherwise provided [see § 3-204] in this Act, [this chapter] the provisions of this Act [this chapter] shall take effect on the first day of the second month following the date of enactment."

#### REPEAL

Section 24 of act Oct. 15, 1962, repealed chapters 1 and 2 of Title 46, and chapter 7A of Title 32.

#### EFFECT ON REORGANIZATION PLAN NO. 5

Act Oct. 15, 1962, provides as follows: "This Act [this chapter] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such

plan. Any function vested by this Act [this chapter] in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with such plan."

#### POPULAR NAME

Section 1 of act Oct. 15, 1962, provided: "That this Act [this chapter] may be cited as the 'District of Columbia Assistance Act of 1962'."

#### § 3-202. Categories and administrations of public assistance.

(a) The following categories of public assistance are hereby established:

- (1) Old Age Assistance;
- (2) Aid to the Blind;
- (3) Aid to the Disabled;
- (4) Aid to Dependent Children;
- (5) General Public Assistance.

(b) This chapter shall be administered by the Commissioners who shall—

(1) provide for maximum cooperation with other agencies rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) establish and enforce such rules and regulations as may be necessary or desirable to carry out the provisions of this chapter;

(3) cooperate in all necessary respects with agencies of the United States Government in the administration of this chapter, and accept any funds, goods, or services payable to the District for public assistance and for administering public assistance;

(4) enter into reciprocal agreements with any State relative to the provision of public assistance to residents and nonresidents.

(Oct. 15, 1962, 76 Stat. 914, Pub. L. 87-807, § 3.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

#### § 3-203. Eligibility for public assistance.

Public assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth; or (c) is otherwise within one of the categories of public assistance established by this chapter: *Provided*, That no persons shall be eligible for old-age assistance established by category number 1, subsection (a) of section 3-202 of this chapter, unless he has resided in the District for five years or more within the nine years immediately preceding application for such assistance,



and who has resided continuously therein for one year immediately preceding the said application. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87-807, § 4.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-204. Amount of public assistance.

(a) The amount of public assistance which any person shall receive shall be determined in accordance with regulations approved by the Commissioners.

(b) Such amount as referred to in subsection (a) of this section shall not be less than the full amount determined as necessary on the basis of the minimum needs of such person as established in accordance with such regulations.

(c) The provisions of subsection (b) of this section shall become effective upon enactment. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87-807, § 5.)

EFFECTIVE DATE

Subsection (b) of this section became effective on Oct. 15, 1962. For effective date of the remainder of chapter see note to section 3-201.

§ 3-205. Application for public assistance.

Application for public assistance shall be accepted from, or on behalf of, any person who believes himself eligible for public assistance. Such application shall be made in the manner and form prescribed by the Commissioners, and shall contain such information as the Commissioners shall require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87-807, § 6.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-206. Investigation of applicant.

Whenever the Commissioners shall receive an application for public assistance, they shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as they may require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87-807, § 7.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-207. Award and payment of public assistance.

(a) Upon completion of the investigation, the Commissioners shall determine whether the applicant is eligible for public assistance, the type and amount of public assistance for which he is eligible, and the date from which such public assistance shall begin, and shall furnish public assistance with reasonable promptness to all eligible persons: *Provided*, That such date shall not be prior to the first day of the calendar month in which such determination is made, except that as a result of reconsideration or review of a case, and in order to correct previous erroneous administrative action such as undue delay or improper denial of assistance, an initial payment of public assistance may be made for a period beginning prior to the first day of the calendar month in which the eligibility determination is made.

(b) Money payments of public assistance shall be made by check, except that in emergency cases under section 3-203, money payments of public assistance may be made in cash, and to accomplish

such purpose the Commissioners are authorized to make necessary provisions for advancing from time to time to one or more officers or employees of the District such sum or sums as the Commissioners may determine: *Provided*, That no such advance shall be made to any such officer or employee who has not been previously bonded in such amount and form as the Commissioners shall determine. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87-807, § 8.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-208. Recipient incapacitated.

Whenever a recipient has been found by the Commissioners to be incapable of taking care of himself, his property, or his money, and a person has been judicially appointed as legal representative, or a responsible person has been appointed by the Commissioners, on behalf of such incapacitated individual for the purpose of receiving and managing such individual's public assistance payments (whether or not he is such individual's legal representative for other purposes), public assistance payments may be made on behalf of such individual to such judicially appointed legal representative, or to such responsible person appointed by the Commissioners. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87-807, § 9.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-209. Emergency public assistance.

The Commissioners may grant emergency public assistance pending completion of investigation when eligibility has been established pursuant to section 3-203: *Provided*, That such emergency assistance shall not be granted in any case for a period exceeding thirty days. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87-807, § 10.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

§ 3-210. Redetermination of grants.

All public assistance grants made under this chapter shall be reconsidered by the Commissioners as frequently as they may deem necessary, but in every case the Commissioners shall make such reconsiderations at least once in each year. After such further investigation as the Commissioners may deem necessary, the amount of public assistance may be changed, or may be entirely withdrawn, if the Commissioners find that any such grant has been made erroneously, or if they find that the recipient's circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, or if other changes should occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall be his duty to notify the Commissioners of such fact immediately on the receipt or possession of such additional income or resources, or on the change of circumstances. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87-807, § 11.)

EFFECTIVE DATE

See note to sections 3-201 and 3-204.

**§ 3-211. Records.**

(a) The Commissioners are directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Commissioners relating to public assistance. Except as herein otherwise provided, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for, or recipients of, public assistance to purposes directly connected with the administration of public assistance. The Commissioners are authorized in their discretion to include in such regulations provision for the public to have access to the records of disbursement or payment of public assistance made after the effective date of this chapter.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this section shall use such information for commercial or political purposes.

(c) This section and section 3-212 shall be construed as State legislation conforming to the requirements of section 618 of the Revenue Act of 1951 (Public Law 183, Eighty-second Congress). (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87-807, § 12.)

**REFERENCE IN TEXT**

Section 618 of the Revenue Act of 1951 referred to in text is set out as a note to section 302 of Title 42, U.S. Code.

**EFFECTIVE DATE**

See note to sections 3-201 and 3-204.

**§ 3-212. Penalties.**

Any person violating subsection (b) of section 3-211 shall be punished by a fine of not more than \$500, or by imprisonment of not more than ninety days, or by both such fine and imprisonment. Prosecutions for such violations and for violations of section 3-216(a) shall be brought to the municipal court for the District of Columbia by the Corporation Counsel or any of his assistants. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 13.)

**CHANGE OF NAME**

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

**EFFECTIVE DATE**

See note to sections 3-201 and 3-204.

**§ 3-213. Funeral expenses.**

On the death of a recipient, reasonable funeral expenses may be paid, subject to rules and regulations approved by the Commissioners. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 14.)

**§ 3-214. Hearings.**

An applicant for, or recipient of, public assistance aggrieved by the action or inaction of the Commissioners shall be entitled to a hearing. Each applicant or recipient shall be notified of his rights to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted in accordance with rules and regulations prescribed by the Commissioners. The findings of the Commissioners on any appeal shall

be final. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 15.)

**EFFECTIVE DATE**

See note to sections 3-201 and 3-204.

**§ 3-215. Public assistance not assignable.**

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 16.)

**EFFECTIVE DATE**

See note to sections 3-201 and 3-204.

**§ 3-216. Fraud in obtaining public assistance—Repayment.**

(a) Any person who by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain, (1) any grant or payment of public assistance to which he is not entitled; (2) a larger amount of public assistance than that to which he is entitled; or (3) payment of any forfeited grant of public assistance; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance, shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than \$500, or imprisoned not to exceed one year, or both.

(b) Any person who obtains any payment of public assistance to which he is not entitled, or in excess of that to which he is entitled shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment required by this subsection may, in the discretion of the Commissioners, be waived in whole or in part, upon a finding by the Commissioners that such repayment would deprive such person, his spouse, parent, or child of shelter or subsistence needed to enable such person, spouse, parent, or child to maintain a minimum standard of health and well-being. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 17.)

**EFFECTIVE DATE**

See note to sections 3-201 and 3-204.

**§ 3-217. Property—District's claim against estate of recipient.**

(a) At the death of any person who has received public assistance in the form of old-age assistance, or aid to the disabled pursuant to the provisions of this chapter, or of any Act repealed by this chapter, the District shall have a preferred claim for the amount of any such public assistance against the estate of the deceased recipient. Notwithstanding the provisions of any other law, no statute of limitations shall be deemed applicable as a defense to any claim of the District made pursuant to this section. The Commissioners are authorized to waive



any such claim when in their judgment they deem it appropriate to do so.

(b) In addition to the remedy provided by subsection (a) of this section, or by any other provision of law, the Commissioners may file a notice in the office of the Recorder of Deeds in any case where public assistance in the form of old-age assistance or aid to the disabled is granted to any person under this chapter, and such notice shall constitute and have the effect of a lien in favor of the District against the real and personal property of such person for the amount of such public assistance which theretofore has been granted or which may thereafter be granted to, or on behalf of, such persons. Any such lien may be enforced by a proceeding filed in the United States District Court for the District of Columbia. The Commissioners shall file in the office of the Recorder of Deeds a release of any such real and personal property from the effect of such lien whenever there has been repaid to the District the amount of the public assistance theretofore granted to, or on behalf of, such person. The Commissioners are also authorized to release any such lien when in their judgment they deem it appropriate to do so. Such notices and releases may be filed without payment of fees.

(c) If the District collects from any recipient of public assistance in the form of old-age assistance or aid to the disabled or from his estate, or otherwise, any amount with respect to public assistance furnished him under this chapter, or under any Act repealed by this chapter the pro rata share to which the United States is equitably entitled shall be paid to the United States in accordance with the provisions of the Social Security Act, as amended (42 U.S.C. 303, 603, 1203, 1353). The pro rata share due the District shall be deposited as miscellaneous receipts to the credit of the District. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87-807, § 18.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

### § 3-218. Responsible relatives.

(a) The husband, wife, father, mother, or adult child of a recipient of public assistance, or of a person in need thereof, shall, according to his ability to pay, be responsible for the support of such person. Any such recipient of public assistance or person in need thereof or the Commissioners may bring an action to require such husband, wife, father, mother, or adult child to provide such support and the court shall have the power to make orders requiring such husband, wife, father, mother, or adult child to pay to such recipient of public assistance or to such person in need thereof such sum or sums of money in such installments as the court in its discretion may direct and such orders may be enforced in the same manner as orders for alimony.

(b) The Commissioners shall be empowered on behalf of the District to sue such husband, wife, father, mother, or adult child for the amount of public assistance granted under this chapter or

under any Act repealed by this chapter to such recipient or for so much thereof as such husband, wife, father, mother, or adult child is reasonably able to pay.

(c) All suits, actions, and court proceedings under this section shall be brought in the domestic relations branch of the municipal court for the District of Columbia. To the extent applicable, the provisions of sections 11-758 to 11-770 shall be followed in suits, actions, and proceedings brought pursuant to this section. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87-807, § 19.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

#### CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

### § 3-219. Payment of expenses.

All necessary expenses incurred by the District in carrying out the provisions of this chapter shall be disbursed in the same manner as other expenses of the District are disbursed. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 20.)

### § 3-220. Delegation of authority.

The Commissioners are authorized to make provisions for delegation and subdelegation of any function vested in them by this chapter to any agency, officer, or employee of the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 21.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

### § 3-221. Voluntary services.

The Commissioners are authorized to accept voluntary services in administering the provisions of this chapter. Such voluntary services shall not create any obligation against the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 22.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

### § 3-222. Appropriations.

(a) The Commissioners shall include in their annual estimates of appropriations such sums as may be needed to carry out the provisions of this chapter.

(b) Unobligated balances of appropriations for the Department of Public Welfare are hereby made available for the purposes of this chapter. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 23.)

#### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

### § 3-223. Validity.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (Oct. 15, 1962, 76 Stat. 920, Pub. L. 87-807, § 26.)

## TITLE 4.—POLICE AND FIRE DEPARTMENTS

### Chapter 1.—METROPOLITAN POLICE

Sec.

- 4-156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.
- 4-159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.
- 4-160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.
- 4-160a. Liability of district government, its officers or employees for damages to property—Net proceeds of judgment in favor of government against warehouseman and garagekeeper for damage to property to be paid to owner—"Gross negligence" defined.

#### § 4-106. Classification of officers and privates of police department—Duties of each.

\* \* \* The Metropolitan Police force shall consist of not less than three thousand officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to section 4-133, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to section 4-514. (May 9, 1956, 70 Stat. 148, ch. 243, § 1; June 27, 1961, 75 Stat. 121, Pub. L. 87-60, § 1.)

#### REFERENCES IN TEXT

Section 4-514 now covered by section 4-528. See note to section in main volume.

#### AMENDMENT

1961—Act June 27, 1961, Pub. L. 87-60, struck out the words "two thousand five hundred officers and members" in the last sentence and inserted in lieu thereof the words "three thousand officers and members".

#### § 4-124. Police surgeons—Qualifications—Duties.

Police surgeons shall have actually and bona fide resided in the District of Columbia for at least two years next preceding the date of their appointment and shall be duly qualified according to law for the practice of medicine and surgery in said District and shall have actively been engaged in the practice of their profession for a period of at least three years next preceding the date of their appointment. Such police surgeons shall be subject to such laws, rules, and regulations as the Commissioners of the District of Columbia may from time to time make, alter, or amend. Such police surgeons shall attend, without charge, all members of said police force and of the fire department of said District for any injury received or disease contracted (whether or not received

or contracted in the performance of duty), examine applicants for appointment and retirement in and to said police force and said fire department, and attend such dependent sick and injured, and examine and attend such insane or alleged insane persons as may be taken in charge by said police, and shall perform such other duties as the said commissioners may direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056, par. 7; Sept. 27, 1962, 76 Stat. 635, Pub. L. 87-708, § 1.)

#### AMENDMENTS

1962—Act of Sept. 27, 1962, amended the third sentence of this section by adding after the words "fire department of said District" the clause, "for any injury received or disease contracted (whether or not received or contracted in the performance of duty)".

#### § 4-140. Arrests without warrant.

#### NOTES TO DECISIONS

Arrest without warrant 3

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#### 3. Arrest without warrant

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith v. United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

#### 6. Evidence

Admission of unsolved housebreakings and larcenies made a number of hours after defendant had been arrested at 12:25 a.m. upon probable cause for attempted housebreaking was inadmissible against defendant who was not presented before a commissioner until some time after 10 a.m. *Coleman v. United States* (1963, 317 F. 2d 891, 115 U.S. App. D.C. 191).

#### § 4-156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.

\* \* \* \* \*

(e) Whenever the owner of property in the custody of the property clerk has been notified by the property clerk, by registered or certified mail, to take possession of such property within thirty days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in section 4-160: *Provided*, That if, in the opinion of the property clerk, such property has no salable value, and if within thirty days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the property clerk, such property shall be disposed of by destruction or otherwise, as the Commissioners of the District of Columbia by regulation or order shall provide. (Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 1.)

#### AMENDMENTS

1962—Section 1 of act Sept. 25, 1962, amended section by adding subsection (e) thereto.



## AFFECT ON REORGANIZATION PLAN NUMBERED 5, OF 1962

Section 6 of act Sept. 25, 1962 [amending this section and sections 4-159, 4-160, repealing last sentence of section 4-156, repealing section 4-156a, and enacting section 4-160a], provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

## REPEAL

Section 3 of act Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, repealed subsections (a), (b) and (c) of section 306, act June 29, 1953, 67 Stat. 101, ch. 159. Subsection (a) was set out as the last sentence of subsection (d) of section 4-156 [see main volume of Code]. Subsections (b) and (c) were set out as section 4-156a. These subsections dealt with collections of fees by property clerk and matter is now covered by section 4-159.

## § 4-156a. Repealed. Sept. 25, 1962, 76 Stat. 691, Pub. L. 87-691, § 3.

Section of act June 29, 1953, 67 Stat. 101, ch. 159, §§ 306 (b) and (c) dealt with collection of fees on impounded vehicles and deposit of collected fees in U.S. Treasury. Matter is now covered by section 4-159.

## § 4-159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.

(a) All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons alleged to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

(b) (1) Whenever any money or property of a deceased person of a value of less than \$1,000 coming into the custody of the property clerk shall remain in his custody for a period of six months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in section 4-160 of this chapter: *Provided*, That prior to the disposition of such property of a deceased person it shall be the duty of the property clerk to ascertain whether there is pending in the United States District Court for the District of Columbia any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the property clerk shall not dispose of such property until final disposition by the court of such petition: *Provided further*, That in any case where the property clerk acquires actual knowledge that a petition for the appointment of a legal representative of such

deceased person has been filed or is pending in a court outside of the District of Columbia, the property clerk shall not dispose of such property until final disposition by the court of such petition.

(b) (2) Whenever any money or property of a deceased person shall be of a value of \$1,000 or more and shall have remained in the custody of the property clerk for at least six months, all records pertaining to the same shall be referred by the property clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent: *Provided*, That upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs-at-law or next of kin of the decedent, as provided by law, shall be deposited into the Registry of the Probate Court, and upon the expiration of a period of three years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia: *Provided further*, That if the administrator does not take possession of such property within three months from the date of his appointment, the property clerk may, after giving such administrator thirty days' notice by registered or certified mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

(c) Whenever the property clerk has custody of any property belonging to any person who has been adjudged of unsound mind and a committee has been appointed for such person but fails to take possession of the property of such person in the custody of the property clerk within six months from the date of such committee's appointment, the property clerk shall give such committee sixty days' notice by registered or certified mail of his intention to sell such property at public auction or otherwise dispose of such property in accordance with law. If, upon the expiration of such sixty days' notice, the committee has not taken custody of such property, (a) the property clerk is authorized to sell such property at public auction, and, after deducting the expenses of the sale, expenses incident to the maintenance and custody of such property, and any amounts due the District of Columbia for care and maintenance of the adjudicated patient, shall pay the remaining proceeds of the sale over to such committee, or (b) if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by regulation or order, determine.

(d) (1) The said Commissioners are authorized, in their discretion, to store in any commercial warehouse or garage in the District of Columbia, or in or on any facility under the jurisdiction of the District of Columbia, any property coming into the custody of the property clerk pursuant to this chap-



ter, including vehicles impounded by any officer or member of the Metropolitan Police force.

(2) The Commissioners are authorized to fix, by regulation, the fees to be charged to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of and protecting such property and for the cost of storing such property in any commercial warehouse or garage, and whenever any such property is stored in or on any facility under the jurisdiction of the District of Columbia, the Commissioners shall fix the storage fee in an amount reasonably estimated by them to be the value of the storage service rendered for each day during which such property is so stored, and to collect all such fees due and owing for such property before releasing such property to its owner or his legal representative: *Provided*, That the Commissioners are authorized, in their discretion, to waive the charging and collecting of such fees for property taken into custody as evidence, the proceeds of crime, or from persons supposed to be insane: *Provided further*, That the property clerk is authorized to sell at public auction pursuant to subsection (a) of section 4-160 of this chapter any property stored in a commercial garage or warehouse, when the storage charges for such property exceed 75 per centum of its value as determined by the property clerk, regardless of the amount of time for which such property is required by other sections of this chapter to be held by the property clerk.

(3) Fees collected by reason of this section shall be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C. § 416, May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 1; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 2.)

#### AMENDMENTS

1962—Section 2 of act Sept. 25, 1962, amended section generally. For text of section prior to this amendment see main volume of the Code.

**§ 4-160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.**

(a) All property, except perishable property and animals and property of insane persons, not otherwise disposed of in accordance with section 4-159 of this chapter, that shall remain in the custody of the property clerk for not less than ninety days, except motor vehicles which shall be held for not less than sixty days, without being claimed and repossessed, shall, after having been three times advertised in a daily newspaper of general circulation published in the District of Columbia, be sold at public auction, and the proceeds of such sale, after deducting the expenses of the sale, and all other expenses incident to such custody, having been retained by the said property clerk for a period of at least ninety days without being claimed and repossessed, shall be deposited in the Treasury to the credit of the District of Columbia: *Provided*, That if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of

such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by order or regulation, determine.

(b) Whenever the property clerk shall have in his custody any motor vehicle upon which there is a lien or liens of record in the Office of the Recorder of Deeds of the District of Columbia he shall, prior to the sale thereof pursuant to this section, notify by registered or certified mail each lienor and lienee in any such case of such custody and impending sale, and if such lienor or lienee fail to remove such property from the custody of the property clerk within thirty days from the date of the mailing of such notification, such lien or liens shall be considered to have been abandoned, and shall be thenceforth null and void. Upon being notified in writing of such fact by the property clerk, the Recorder of Deeds of the District of Columbia is authorized to indicate on his records that such lien or liens are thenceforth null and void and the property clerk is authorized to sell any such motor vehicle at public auction free and clear of such lien or liens; except that the proceeds of such sale shall be available, first, for the payment of all expenses incident to such sale and custody; second, for the payment of such liens so declared null and void; third, for payment to the owner in accordance with subsection (a) of this section; and the remainder, if any, shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) All money, except money of insane persons, that shall remain in the custody of the property clerk for six months shall be so advertised, and if not claimed and repossessed within thirty days, it shall likewise be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 4.)

#### AMENDMENTS

1962—Section 4 of act Sept. 25, 1962, amended section generally. For provisions of section prior to this amendment see main volume of the Code.

**§ 4-160a. Liability of district government, its officers or employees for damages to property—Net proceeds of judgment in favor of government against warehouseman and garagekeeper for damage to property to be paid to owner—"Gross negligence" defined.**

Neither the government of the District of Columbia nor any officer or employee thereof shall be liable for damage to any property resulting from the removal of such property from public space, or the transportation of such property into the custody of the property clerk, Metropolitan Police Department, nor for damage to any such property while such property is in the custody of the property clerk, Metropolitan Police Department, when such custody is maintained pursuant to the requirements of law, except that the government of the District of Columbia or any such officer or employee may be liable for damage to such property as a result of gross negligence in the removal, transportation, or storage of such property: *Provided*, That should a judgment be entered for the District of Columbia against any commercial warehouseman or garagekeeper for damage to such property in his care, recovery on



such judgment, less all administrative expenses and court costs to the District of Columbia involved in such litigation, shall be paid by the District of Columbia to the owner of the damaged property as determined by the property clerk. For the purpose of this section the term "gross negligence" means a willful intent to injure property, or a reckless or wanton disregard of the rights of another in his property. (Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 5.)

#### Chapter 4.—FIRE DEPARTMENT

Sec.

4-404a. Workweek established—Hours—Day off—Holidays—Exceptions.

4-408a. Recording annual and sick leave.

4-408b. Annual leave of officers and members of the Firefighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.

#### § 4-404a. Workweek established—Hours—Days off—Holidays—Exceptions.

(a) (1) Beginning with the first day of the first pay period which begins not less than one hundred and twenty days after enactment of this amendatory subsection or which begins on or after July 1, 1962, whichever is later, the Commissioners of the District of Columbia are authorized and directed to establish a workweek for officers and members of the Firefighting Division of the Fire Department of the District of Columbia which will result in an average workweek of not to exceed forty-eight hours during an administratively established workweek cycle which the Commissioners are hereby authorized to establish from time to time.

(2) The firefighting division shall operate under a two-shift system and all hours of duty of any shift shall be consecutive.

(3) The Commissioners of the District of Columbia are further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the firefighting division of forty hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek: *Provided*, That notwithstanding the provisions of this subsection, the Commissioners of the District of Columbia or their designated agent or agents may, whenever the exigencies of the Fire Department require temporary or short-term services of one or more officers or members, order such officer, officers, member, or members to perform such services.

(4) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on one day and extending without a break in continuity into the next day, or in the case of two shifts beginning on the same day, the Commissioners are authorized to designate the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(5) If a holiday shall fall on an day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Commissioners of the District of Co-

lumbia, and if he is required to be on duty in lieu of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a break in continuity into the next day, the Commissioners of the District of Columbia are authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection the word "holiday" shall have the same meaning as such word has in section 4-808, and as supplemented by section 1-1210.

(6) Notwithstanding the provisions of the preceding subsection, whenever the Commissioners declare that an emergency exists of such a character as to necessitate the continuous service of all or some of the officers and members of the Fire Department, the granting of days off shall be suspended during the continuation of such emergency. Whenever the granting of days off has been suspended and discontinued pursuant to this subsection, each officer and member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty which he performs by reason of the suspension and discontinuance of his days off under this subsection. Any officer or member so performing duty shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in section 5 of the Act entitled "An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia", approved July 1, 1930, as amended. (June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87-399, §§ 1, 2; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, §§ 1, 2.)

#### REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsec. (f), formerly classified to sections 4-113, 4-114, 4-501, 4-503, 4-506, 4-507, 4-508 to 4-510, and 4-512 to 4-514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3, and is now classified to sections 4-521 to 4-535.

Section 5 of act July 1, 1930, as amended, referred to in the text, formerly classified to sections 4-503 and 4-504, was repealed by act Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 5 (2), and is now covered by section 4-524.

#### AMENDMENTS

1962—Act Sept. 25, 1962, amended the section as follows:



Paragraph (a) was amended to read as above set out. The amendment reduces the workweek of officers and members of the Firefighting Division to "an average workweek of not to exceed forty-eight hours".

Paragraphs (b), (c), (d), (e), and (f) were redesignated as paragraphs (2), (3), (4), (5), and (6), respectively.

Paragraph (c), redesignated as paragraph (3), was amended by striking the period, the addition of a colon and proviso clause as above set out.

1961—Section 1, act Oct. 5, 1961, amended subsection (a) to read as set out in (a), (b), (c), (d), and (e). The wording of subsection (a) prior to this amendment is set out in the main volume of the Code.

Section 2 of the same act amended the first sentence of former subsection (b) to read as above set out in subsection (f), the said subsection having been redesignated as (f) by the same act.

1955—Subsec. (b) amended by act Aug. 4, 1955, which added the matter following the first sentence.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of act Sept. 25, 1962, provides as follows:

"This Act [amending sections 4-404a, 4-821 and enacting 4-408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 7 of act Oct. 5, 1961, provided: "This Act [amending this section and sections 4-807, 4-821, 4-904, and adding 4-408a] shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961].

#### EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 4, 1955, provided: "This Act [amending this section and section 4-904] shall take effect on July 1, 1955."

#### TRANSFER OF FUNCTIONS

Fire Chief as successor to Chief Engineer, see note under section 4-402.

#### CROSS REFERENCES

Firemen excluded from general law concerning sick leave for District employees, but included as to annual leave, see § 1-312.

Formula for recording annual and sick leave, see § 4-408a.

Other provisions concerning leave, see § 4-408.

Policemen and firemen's retirement and disability, see § 4-521 et seq.

#### § 4-408a. Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members of the firefighting division of the Fire Department of the District of Columbia, the workday of any workweek shall be considered to be twelve hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the firefighting division, the following formula shall be used:

(1) During the day shift of ten hours, one and two-tenths hours of leave shall be charged for each hour taken.

(2) During the night shift of fourteen hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth.

(Oct. 5, 1961, 75 Stat. 832, Pub. L. 87-399, § 6.)

#### EFFECTIVE DATE

Act Oct. 5, 1961, enacting this section and amending sections 4-404a, 4-807, 4-821, and 4-904 provided as follows:

"This Act shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961.]

#### § 4-408b. Annual leave of officers and members of the Firefighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.

(a) In lieu of the annual leave to which officers and members of the Firefighting Division of the Fire Department of the District of Columbia are entitled under the provisions of section 5, U.S.C. 2062, as amended, such officers and members shall be entitled to annual leave which shall accrue as follows:

(1) Four and eight-tenths hours for each full biweekly pay period in the case of officers and members with less than three years' service;

(2) Seven and five-tenths hours for each full biweekly pay period in the case of officers and members with three but less than fifteen years' service;

(3) Nine and six-tenths hours for each biweekly pay period in the case of officers and members with fifteen years' or more service.

(b) Accumulated annual leave to the credit of each officer and member of such Firefighting Division shall be adjusted by applying a four-fifths factor so that each officer and member of such Firefighting Division shall be given credit for four-fifths of a day of leave for each day of such accumulated annual leave, and thereafter accumulated annual leave credited to him pursuant to the Annual and Sick Leave Act of 1951, as amended, shall be similarly adjusted when an officer or member is transferred to the Firefighting Division from another agency or from another division of the Fire Department.

(c) When an officer or member of such Firefighting Division is transferred to another agency or to another division of the Fire Department, whose employees are entitled to annual leave with pay pursuant to the Annual and Sick Leave Act of 1951, as amended, the reverse of the formula in subsection (b) shall be applied for the purpose of adjusting accumulated annual leave.

(d) For computation on an hourly basis, all adjusted days of annual leave or fractions thereof, as provided in subsections (b) and (c) of this section, and days of sick leave shall be multiplied by twelve to determine the number of hours of annual or sick leave to which each such officer or member of such Firefighting Division shall be entitled, and the number of hours of annual or sick leave shall be divided by twelve to determine the number of days, or fraction thereof, of annual or sick leave to which such officer or member of such Firefighting Division shall be entitled.

(e) Notwithstanding any provision in any other law, the amount of annual leave accumulated on the effective date of this section, if thirty days or more, shall, upon conversion to the new total in accordance with this section, be the maximum accumulation authorized: *Provided*, That if the amount of annual leave accumulated before the conversion is less than thirty days on the effective date of this section, then, after conversion to the



new total, leave which is not used shall accumulate for use in succeeding years until it totals no more than twenty-four days at the beginning of the first complete biweekly pay period. (Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 4.)

## REFERENCES IN TEXT

The Annual and Sick Leave Act of 1951, referred to in text is set out in 5 U.S.C., chapter 23, and the other sections described in the note to section 5 U.S.C. 2061.

## EFFECTIVE DATE

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4-404a, 4-821 and enacting 4-408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

## CROSS REFERENCES

Other provisions relating to annual leave, see §§ 1-312, 4-408, 4-404a, and 4-821.

### Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

Sec.

4-527. Retirement for disability while performing or not performing duty.

§ 4-527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1.)

## AMENDMENT

Act Oct. 23, 1962, amended section by designating first paragraph as (1) and by adding paragraph (2).

## NOTES TO DECISIONS

Record of injury 1  
Service connected disability 4.50

## 1. Record of injury

As contained in District of Columbia fireman's personnel file, cryptic notation "3-2-48 Lumbo-sacral strain, Box 9322", when shown to refer to fire at which fireman claimed to have injured his back while carrying a 275-300 pound body of a fire victim, required reconsideration of fireman's claim to retirement on basis of disability incurred in performance of duties, where retirement board had granted retirement for nonservice-connected disability on ground of lack of record of injury in personnel file. *W. D. Lovell v. W. N. Tobriner et al.*, etc. (1962, 310 F. 2d 870, 114 U.S. App. D.C. 65).

## 4.50. Service connected disability

Where record concerning policeman's retirement contained no evidence contrary to physician's testimony that policeman's disability, consisting of marked, mixed type of neurosis with anxiety and depressive features and multiple psychogenic complaints following severe attack of bulbar polio, was connected with performance of his police duty, there was no basis in record for Commissioners' determination that disability had not been incurred in line of duty. *T. L. Souder v. W. N. Tobriner et al.* (1963, 314 F. 2d 272, 114 U.S. App. D.C. 267).

§ 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

## NOTES TO DECISIONS

## 2. Right to retirement.

Fireman suspended for misconduct was still a "member" of fire department within statute providing that any member attaining age of 50 years and completing 20 years of service may state intention to retire and shall be entitled to annuity and fireman, who had not been discharged, had absolute right to elect retirement. *E. J. Daigle v. Robert E. McLaughlin et al.* (1961, 193 F. Supp. 902).

§ 4-529. Involuntary separation from service.

## TRANSFER OF FUNCTIONS

Reorg. Ord. No. 47, as amended June 21, 1962, transferred the authority to express a judgment as to the disability of a member from performing further duty in his department to the Police and Firemen's Retirement and Relief Board. This authority was formerly vested in the Board of Police and Fire Surgeons. This amendment also outlined certain duties of the Board of Police and Fire Surgeons. The amendment to the order is set out in the appendix to Title 1.

§ 4-533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.

## TRANSFER OF FUNCTIONS

Reorg. Ord. No. 31 was amended on June 21, 1962, delegating the authority set forth in sec. 4-529 to express a judgment as to the disability of a member, exclusively to the Police and Firemen's Retirement and Relief Board and also outlining the evidence to be considered by the Board in making findings of fact. The amendments to the order are set out in the appendix to Title 1.

§ 4-539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

Each widow or child who, on or after the effective date of this section, was receiving or is now receiving or shall hereafter be entitled to receive relief or annuity by reason of service in the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the White House Police force, or the United States Secret Service Division, of a deceased former officer or member who died in the service of any such organization prior to the effective date of the Policemen and Firemen's Retirement and Disability Act



Amendments of 1957, or who retired prior to such effective date, shall be entitled to benefits computed in accordance with the provisions of section 4-531.

Nothing in this section shall be deemed to reduce the relief or retirement compensation any person receives, or is entitled to receive, on the date of the enactment of this section. (Aug. 24, 1962, 76 Stat. 402, Pub. L. 87-601, § 1, 2.)

#### REFERENCE IN TEXT

The effective date of Firemen's Retirement and Disability Act Amendments of 1957 is Oct. 1, 1956. The said act is classified to sections 4-521 to 4-538.

#### EFFECTIVE DATE OF ACT AUG. 24, 1962

Section 3 of act Aug. 24, 1962, provides as follows: "The effective date of this Act shall be the first day of the first month following the date of enactment."

### Chapter 8.—SALARIES

Sec.

4-823c. Adjustment of rates of basic compensation of officers and members to whom section 4-823, as amended by act October 24, 1962, applies—Service and longevity steps.

4-826a. Classification of aide to Fire Marshal.

#### § 4-807. Additional compensation for working on holidays.

Under regulations promulgated by the Commissioners of the District of Columbia each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation: *Provided*, That for the purpose of sections 4-807 to 4-809, each such officer or member who works eight hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one-eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting thirty minutes or more as a full hour: *Provided further*, That the total compensation to be paid any such officer or member for duty performed on a holiday shall not exceed an amount equal to twice the daily rate of pay to which such officer or member shall be entitled for performing one regular tour of duty on a day other than a holiday: *And provided further*, That no such officer or member shall be entitled to additional compensation for such holiday work for any day for which he is entitled to receive additional compensation under the provisions of subsection (e) of section 4-904. So much of the compensation for such holiday work as is in excess of the regular pay for such day shall not be considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under the provisions of the Policemen and Firemen's Retirement and Disability Act (sections 4-521 to 4-535), nor shall such excess compensation be subject to deduction as provided in sections 4-521 to 4-535. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, and the United States Park Police force shall be available

for payment of the additional compensation authorized by sections 4-807 to 4-809. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 4.)

#### AMENDMENT

1961—Section 4, act Oct. 5, 1961, amended this section to read as above set out. The provisions of the section prior to this amendment are set out in the main volume of this Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4-404a.

#### § 4-821. Computation of rates of compensation.

\* \* \* \* \*

(b) Whenever for any such purpose it is necessary to convert a basic annual rate established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 to basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by fifty-two or twenty-six, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by five or ten, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by two to derive a one-half daily rate; and

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(E) In the case of the Firefighting Division of the Fire Department of the District of Columbia—

(i) a biweekly rate shall be divided by two to derive a weekly rate;

(ii) the weekly rate shall be divided by the number of workdays in the average established workweek to arrive at a daily rate;

(iii) a daily rate shall be divided by two to derive a one-half daily rate; and

(iv) an hourly rate shall be determined by dividing the daily rate of pay by twelve, except for the purpose of computation of holiday pay.

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the firefighting division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent. (As amended Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 5; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 3.)

#### AMENDMENTS

1962—Section 3 of act Sept. 25, 1962, amended clause (E) of subsection (b) to read as above set out. Clause (E) before this amendment read as follows: "(E) in the case of the firefighting division of the Fire Department of the District of Columbia, except with respect to computation of holiday pay, the weekly or biweekly rate shall be divided by 56 or 112, as the case may be, to derive an hourly rate."



1961—Section 5, act Oct. 5, 1961, amended clause (D) of subsection (b) to read as above set out under clauses (D), (E), and (F). The wording of clause (D) prior to amendment is set out in the main volume of the Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4-404a, 4-821 and enacting 4-408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

SALARY SCHEDULE

Salary class and title	Service step 2	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Long- evity step 7	Long- evity step 8	Long- evity step 9
Class 1:									
Subclass (a).....	\$5, 650	\$5, 950	\$6, 250	\$6, 550	\$6, 850	\$7, 150	\$7, 450	\$7, 750	\$8, 050
Fire private.									
Police private.									
Subclass (b).....	5, 920	6, 220	6, 520	6, 820	7, 120	7, 420	7, 720	8, 020	8, 320
Private assigned as—									
Technician I.									
Plainclothesman. <sup>1</sup>									
Subclass (c).....	6, 190	6, 490	6, 790	7, 090	7, 390	7, 690	7, 990	8, 290	8, 590
Private assigned as—									
Technician II.									
Station clerk.									
Motorcycle officer.									
Class 2:									
Subclass (a).....	6, 550	6, 850	7, 150	7, 450	-----	-----	7, 750	8, 050	8, 350
Fire inspector.									
Subclass (b).....	6, 820	7, 120	7, 420	7, 720	-----	-----	8, 020	8, 320	8, 620
Fire inspector assigned as—									
Technician I.									
Subclass (c).....	7, 090	7, 390	7, 690	7, 990	-----	-----	8, 290	8, 590	8, 890
Fire inspector assigned as—									
Technician II.									
Class 3.....	6, 990	7, 290	7, 590	7, 890	-----	-----	8, 190	8, 490	8, 790
Assistant marine engineer.									
Assistant pilot.									
Detective.									
Class 4:									
Subclass (a).....	7, 450	7, 750	8, 050	8, 350	-----	-----	8, 650	8, 950	9, 250
Fire sergeant.									
Police sergeant.									
Subclass (b).....	7, 890	8, 190	8, 490	8, 790	-----	-----	9, 090	9, 390	9, 690
Detective sergeant.									
Subclass (c).....	7, 930	8, 230	8, 530	8, 830	-----	-----	9, 130	9, 430	9, 730
Police sergeant assigned as—									
Motorcycle officer.									
Class 5.....	8, 350	8, 725	9, 100	9, 475	-----	-----	9, 850	10, 225	-----
Fire lieutenant.									
Police lieutenant.									
Detective lieutenant.									
Class 6.....	8, 915	9, 290	9, 665	10, 040	-----	-----	10, 415	10, 790	-----
Marine engineer.									
Pilot.									
Class 7.....	9, 475	9, 850	10, 225	10, 600	-----	-----	10, 975	11, 350	-----
Fire captain.									
Police captain.									
Detective captain.									
Class 8.....	10, 975	11, 375	11, 775	12, 175	-----	-----	12, 575	12, 975	-----
Assistant Superintendent of Machinery.									
Battalion fire chief.									
Deputy fire marshal.									
Police inspector.									
Class 9.....	12, 575	12, 975	13, 375	13, 775	-----	-----	14, 175	14, 575	-----
Deputy Fire Chief.									
Deputy Chief of Police.									
Fire marshal.									
Superintendent of Machinery.									
Class 10.....	17, 000	17, 400	17, 800	18, 200	-----	-----	18, 600	19, 000	-----
Fire Chief.									
Chief of Police.									

<sup>1</sup> Service as such for over 60 consecutive calendar days.

(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85-584, Title I, 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87-882, § 1.)

AMENDMENTS

1962—Section 1 of act Oct. 24, 1962, amended section to read as above set out.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [amending § 4-823, enacting § 4-823c, amending § 4-826, enacting § 826a, amending §§ 4-830 and 4-832 and repealing § 4-823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

§ 4-823a. Repealed. Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 4.

Section of act Sept. 8, 1960, 74 Stat. 868, Pub. L. 86-

EFFECTIVE DATE OF 1961 AMENDMENT  
See note under section 4-404a.

§ 4-823. Salary schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

734, § 1, provided for salary increases of 7.5 per centum of basic compensation.

For effective date of repeal, see note to section 4-823.

§ 4-823c. Adjustment of rates of basic compensation of officers and members to whom section 4-823, as amended by act October 24, 1962, applies—Service and longevity rates.

The rates of basic compensation of officers and members to whom the amendment made by section 4-823 apply shall be adjusted in accordance with this section, and on and after the effective date of this Act section 4-824 shall not apply to any such officer or member whose rate of basic compensation

is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(a) Each officer and member receiving basic compensation immediately prior to the effective date of this Act at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall receive a rate of basic compensation at the corresponding scheduled service or longevity rate in effect on and after the effective date of this Act, except that:

(1) Each private who immediately prior to the effective date of this Act was serving in service step 6, or longevity steps 7 or 8 in any subclass in class 1, and had a total of thirteen or more years of service as of the first day of the first pay period which began after January 1, 1958, shall, on the effective date of this Act, be advanced from service step 6 to longevity step 7, or from longevity step 7 to longevity step 8, or from longevity step 8 to longevity step 9, as the case may be, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving. Any active service immediately prior to the effective date of this Act which each such private has rendered in the service step or longevity step from which he is being advanced will be credited to him for subsequent advancement purposes under the provisions of section 4-832 except that such active service provision shall not apply to any private assigned as detective, class 1, subclass (c), immediately prior to the effective date of this Act.

(2) Each private who, immediately prior to the effective date of this Act, was serving in a position bearing the title of station clerk in class 1, subclass (b), shall be placed in the corresponding title in class 1, subclass (c), and shall receive basic compensation (1) at the service step or longevity step in subclass (c) corresponding to that service step or longevity step in which he was serving immediately prior to the effective date of this Act, or (2) at the longevity step to which he is entitled under the provisions of paragraph (1) of subsection (a) of this section. Any active service which each private so assigned as station clerk has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4-829 or section 4-832 as the case may be.

(3) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective or precinct detective in class 1, subclass (c) or subclass (d), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section, be placed in and receive basic compensation at a scheduled rate in class 3, with the title of detective as follows:

From—	To—
Detective, class 1, subclass (c) :	Detective, class 3 :
Service steps 1, 2, 3, and 4----	Service step 1.
Service step 5-----	Service step 2.
Service step 6-----	Service step 3.
Longevity step 7-----	Service step 4.
Longevity step 8-----	Longevity step 7.
Longevity step 9-----	Longevity step 8.

From—	To—
Precinct detective, class 1, subclass (d) :	Detective, class 3 :
Service steps 1, 2, and 3----	Service step 1.
Service step 4-----	Service step 2.
Service step 5-----	Service step 3.
Service step 6-----	Service step 4.
Longevity step 7-----	Longevity step 7.
Longevity step 8-----	Longevity step 8.
Longevity step 9-----	Longevity step 9.

In computing the time served by each officer or member so assigned from detective, class 1, subclass (c), to detective, class 3, on the effective date of this Act for purposes of advancement to the next higher scheduled service step or longevity step as provided in section 4-829 or 4-832, as the case may be, such time shall commence as of the effective date of this Act. Any active service which each officer or member so assigned from precinct detective, class 1, subclass (d), to detective, class 3, has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4-829 or section 4-832, as the case may be.

(4) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective sergeant in class 1, subclass (e), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section be placed in the corresponding title in class 4, subclass (b), and shall receive the scheduled rate of basic compensation at a service step or longevity step as follows:

From—	To—
Detective sergeant, class 1, subclass (e) :	Detective sergeant, class 4, subclass (b) :
Service steps 1, 2, and 3----	Service step 1.
Service step 4-----	Service step 2.
Service step 5-----	Service step 3.
Service step 6-----	Service step 4.
Longevity step 7-----	Longevity step 7.
Longevity step 8-----	Longevity step 8.
Longevity step 9-----	Longevity step 9.

Any active service which each officer or member so assigned as detective sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under provisions of section 4-829 or section 4-832, as the case may be.

(5) Each officer and member who, immediately prior to the effective date of this Act, was in class 3, subclass (a), as corporal, or in class 3, subclass (b), as corporal assigned as motorcycle officer, shall, on the effective date of this Act be placed



in and receive basic compensation at a scheduled rate in class 4, subclass (a), or class 4, subclass (c), as the case may be, with the title of sergeant as follows:

From—	Sergeant, class 4,
Corporal, class 3, subclass (a) :	To—
	subclass (a) :
Service steps 1 and 2-----	Service step 1.
Service step 3-----	Service step 2.
Service step 4-----	Service step 3.
Longevity step 7-----	Service step 4.
Longevity step 8-----	Longevity step 7.
Longevity step 9-----	Longevity step 8.
	To—
Corporal assigned as motor-	Sergeant assigned as
cycle officer, class 3, sub-	motorcycle officer,
class (b) :	class 4, subclass
	(c) :
Service steps 1 and 2-----	Service step 1.
Service step 3-----	Service step 2.
Service step 4-----	Service step 3.
Longevity step 7-----	Service step 4.
Longevity step 8-----	Longevity step 7.
Longevity step 9-----	Longevity step 8.

In computing the time served by each officer or member so assigned from corporal to sergeant or from corporal to sergeant assigned as motorcycle officer on the effective date of this Act for purposes of advancement to the next higher scheduled service step or longevity step as provided in section 4-829 or 4-832, as the case may be.

(6) Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act, and who was a sergeant prior to July 1, 1953, shall be advanced to and shall receive the scheduled rate of basic compensation for longevity step 9 in class 4. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant after June 30, 1953, and prior to the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall, if immediately prior to the effective date of this Act he was serving in longevity step 7 or service step 4 or any lower service step, be advanced to the second higher scheduled step in class 4 above such step in which he was so serving or if, immediately prior to the effective date of this Act he was serving in longevity step 8 he shall be advanced to longevity step 9 in class 4, and shall receive the scheduled rate of basic compensation for the step to which he is advanced. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant on or after the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall be advanced to and receive the scheduled rate of basic compensation for the next higher scheduled step in class 4. Any active service which each such sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4-829 or section 4-832, as the case may be.

(7) Each officer or member receiving basic compensation at scheduled longevity step 9, in classes 5 through 10, respectively, of the District

of Columbia Police and Firemen's Salary Act of 1958, as amended, shall be placed in and receive the rate of basic compensation at the scheduled longevity step 8, in classes 5 through 10, respectively, of the above schedule.

(Oct. 24, 1962, 76 Stat. 1240, Pub. L. 87-882, § 2.)

#### REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1958, as amended, referred to in text, is set out in sections 4-823 to 4-837.

"This Act" referred to in text [act Oct. 24, 1962, Pub. L. 87-882], is this section, the amendments to sections 4-823, 4-826, 4-830, and 4-832, the enactment of 4-826a, and the repeal of section 4-823a.

#### EFFECTIVE DATE OF 1962 ACT

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [enacting this section, amending sections 4-823, 4-826, 4-830 and 4-832, and enacting section 4-826a and repealing section 4-823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

#### EFFECTIVE DATE OF THE DISTRICT OF COLUMBIA POLICE AND FIREMEN'S SALARY ACT OF 1958

Section 508(a) of act Aug. 1, 1958, Pub. L. 85-584, provided that: "This Act shall take effect as of the first day of the first pay period which begins after January 1, 1958."

#### § 4-826. Positions to be included as Technician II.

In initially adjusting salaries, the following positions shall be included as Technician II in Sub-Class (c) of Class 1 of the schedule in section 4-823:

(a) Chief Radio Technician for the Fire Department;

(b) Aide to the Fire Chief, Deputy Chief, Battalion Fire Chief, or Superintendent of Machinery. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 203; Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87-882, § 3(a).)

#### AMENDMENT

1962—Act Oct. 24, 1962, section 3(a) amended section by striking out the words, "Fire Marshal."

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4-823.

#### § 4-826a. Classification of aide to Fire Marshal.

The aide to the Fire Marshal shall be included as a fire inspector in class 2, subclass (a). (Aug. 1, 1958, Pub. L. 85-584, § 204, as added, Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87-882, § 3(b).)

#### EFFECTIVE DATE

See note to section 4-823.

#### § 4-830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.

Any officer or member who is promoted or transferred to a higher class shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds his existing rate of compensation by not less than one step increase of the class from which he is promoted or transferred: *Provided*, That any such officer or member serving in a subclass other than subclass (a) of any class (who is not assigned as a detective sergeant in class 4, subclass (b)) shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds by one step increase the rate shown for subclass (a) in the same step in which he was serving in the class from which promoted: *Provided*

further, That such scheduled rate in the higher class shall not be less than his existing rate of pay. If the existing rate of compensation of an officer or member is above the maximum longevity step increase in the class from which he is promoted or transferred and there is no rate in the higher class to which he is promoted or transferred, which is at least one step increase above his existing rate, such officer or member shall receive the maximum longevity rate of such higher class or his existing rate, whichever is greater. Any officer or member in any class who is assigned or transferred to any Sub-Class within the same Class shall be placed in the same service or longevity step in such Sub-Class as that which he was in immediately prior to being so assigned or transferred. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(c).)

AMENDMENT

1962—Section 3(c) of act Oct. 24, 1962, amended the section by adding the proviso clauses to the first sentence.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4-823.

§ 4-832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4-823 to 4-837.

\* \* \* \* \*

(a) (2) Not more than three successive longevity step increases may be granted to any officer or member in classes 1 through 4, nor more than two successive longevity step increases may be granted to any officer or member in classes 5 through 10; nor shall any officer or member be granted a longevity step increase above the maximum scheduled longevity step in the subclass in which he is serving or, if there are no subclasses in his class, in the class in which he is serving.

\* \* \* \* \*

(As amended Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(d).)

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4-823.

AMENDMENT

1962—Section 3(d) of act Oct. 24, 1962, amended paragraph (2) of subsection (a) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.

4-904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.

§ 4-904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.

\* \* \* \* \*

(e) For each day a vacancy exists in the personnel strength for which funds are appropriated by applicable appropriation acts current in any fiscal year in any particular rank of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, the Chief of Police, the Fire Chief, the Secretary of the Interior, and the Chief of the Secret Service Division may permit an officer or member of their respective forces of such rank voluntarily to perform duty on any day off granted under this section. Each such officer or member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty voluntarily performed under this subsection, such additional compensation to be paid from current appropriations. Any officer or member so volunteering to perform duty on a day off shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in such section. (As amended, Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 3.)

REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsection (e), is set out in sections 4-521 to 4-535.

AMENDMENT

1961—Section 3, act Oct. 5, 1961, amended subsection (e) as follows:

(a) By inserting "the Fire Department of the District of Columbia" after "Metropolitan Police force,,"; (b) by striking "Major and Superintendent of Police,,"; and inserting in lieu thereof "Chief of Police, the Fire Chief,,"; and (c) by striking therefrom "section 5 of the Act entitled 'An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia', approved July 1, 1930, as amended", and inserting in lieu thereof "such section".

EFFECTIVE DATE OF 1961 AMENDMENT

See note to section 4-404a.

CROSS REFERENCE

For duties and size of White House Police Force, see 3 U.S.C. 202, 203.





## TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap.  
9. Horizontal Property Regimes..... 5-901

### Chapter 1.—ALLEY DWELLINGS

#### § 5-105a. Disposition of receipts from sales, leases, etc.

All receipts derived from sales, leases, or other sources shall be covered into the Treasury of the United States monthly. (Aug. 17, 1961, 75 Stat. 355, Pub. L. 87-141, title I, § 101.)

#### SIMILAR PROVISIONS

1963—Dec. 19, 1963, 77 Stat. 440, Pub. L. 88-215, § 101.

1962—Oct. 3, 1962, 76 Stat. 731, Pub. L. 87-741, § 101.

Section is from the Independent Offices Appropriation act 1962, act Aug. 17, 1961. Similar provisions were contained in the following appropriation act.

1961—July 12, 1960, 74 Stat. 436, Pub. L. 86-626, title I, § 101. For earlier similar provisions see main volume of Code.

### Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

#### § 5-317. Means of egress and fire safety appliances required in certain public buildings.

#### NOTES TO DECISIONS

Constitutionality .51  
Facts as basis for regulation .52  
Notice, publication of .53  
Purpose of law .54  
Regulations, validity of 2

##### .51. Constitutionality

Fire prevention provisions of the District of Columbia Building Code were not unconstitutional on theory of vagueness even though drawn in technical language which could not be understood by laymen, where such language was understandable by persons with knowledge in the field. *R. L. Jones et al. v. District of Columbia; The Ellen Real Estate Corp. et al. v. District of Columbia* (1963, 323 F. 2d 306, — U.S. App. D.C. —).

Provisions of District of Columbia Building Code, like municipal ordinances, were protected by a presumption of constitutionality, and they could not be declared unconstitutional unless clearly arbitrary. *Id.*

Provisions of District of Columbia Building Code relative to fire safety were not unconstitutional merely because they granted discretion to an administrative officer to grant variances in limited cases. *Id.*

##### .52. Facts as basis for regulation

Facts developed at public hearings held before promulgation of fire regulations under the District of Columbia Building Code did not necessarily have to support each and every provision of the regulations which resulted therefrom. *R. L. Jones et al. v. District of Columbia; The Ellen Real Estate Corp. et al. v. District of Columbia* (1963, 323 F. 2d 306, — U.S. App. D.C. —).

##### .53. Notice, publication of

Although act authorizing commissioners of the District of Columbia to promulgate regulations required a public hearing prior to promulgation of regulations, personal notice to property owners of public hearing was not necessary, and notice requirement was met by publication of notice of hearings in three newspapers of general circula-

tion and by mailing of notice to 300 organizations which had requested notification. *R. L. Jones et al. v. District of Columbia; The Ellen Real Estate Corp. et al. v. District of Columbia* (1963, 323 F. 2d 306, — U.S. App. D.C. —).

##### .54. Purpose of law

Purpose of the Means of Egress Act was to protect the public, particularly that portion of the public living in or frequenting buildings covered by the act. *R. L. Jones et al. v. District of Columbia; The Ellen Real Estate Corp. et al. v. District of Columbia* (1963, 323 F. 2d 306, — U.S. App. D.C. —).

##### 2. Regulations, validity of

Fire regulations promulgated by Commissioners of District of Columbia requiring the correction of deficiencies in existing rooming houses were not so burdensome as to make compliance unreasonably onerous or constitute a confiscation of property, especially where provision was made for an owner to apply to Board of Appeals and Review for the grant of a variance if compliance was deemed by owner to be unduly burdensome. *R. L. Jones et al., The Ellen Real Estate Corp. et al. v. The District of Columbia* (1963, 212 F. Supp. 438).

Fire regulations promulgated by Commissioners of District of Columbia were not invalid as unenforceable for uncertainty and ambiguity where technical language was intrinsically necessary in order to carry out legislative purpose and where language used was reasonably understandable to one having knowledge in the field. *Id.*

Fire regulations promulgated by Commissioners of District of Columbia were not invalid on ground that appropriate public hearing had not been held where notice had been given and hearing had been held similar in character and purpose to hearings held by congressional committees, even though findings could not be made from the transcript to support each regulation adopted following the hearing. *Id.*

#### § 5-318. Same—Occupancy prohibited after notice of noncompliance.

##### .50. Certificate of occupancy

Temporary certificates of occupancy issued to landlords did not relieve them from obtaining new certificates of occupancy under subsequently promulgated District of Columbia Building Code. *R. L. Jones et al. v. District of Columbia; the Ellen Real Estate Corp. et al. v. District of Columbia* (1963, 323 F. 2d 306, — U.S. App. D.C. —).

### Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

#### § 5-405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fire-proof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

\* \* \* \* \*

On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over ninety feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue,



or highway sixty feet wide or less, where a height equal to the width of the street may be allowed: *Provided*, That any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of ninety-five feet above the level of the adjacent curb.

(As amended Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1.)

#### AMENDMENT

Act Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1, amended the third paragraph of the section by striking out the words, "over eight stories in height or".

§ 5-410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

#### NOTES TO DECISIONS

##### 1. Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al. v. W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5-411. Plats of restricted area to be prepared.

#### NOTES TO DECISIONS

Adjacent 1  
Authority of Fine Arts Commission 2

##### 1. Adjacent

Under statute giving Commission of Fine Arts duty of approving alteration of buildings adjacent to public buildings of major importance and when part of property fronts or abuts on portion of Pennsylvania Avenue extending from Capitol to White House, property located on Thirteenth Street Northwest was "adjacent" and did "front" on Pennsylvania Avenue within contemplation of statute. *Stanley Company of America Inc., et al. v. R. E. McLaughlin et al.* (1961, 195 F. Supp. 519).

##### 2. Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al. v. W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or

alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5-413. Zoning regulations to be made by Zoning Commission—Uniformity.

#### NOTES TO DECISIONS

##### 9.50. Reasons for decision

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al., and Woodley Hill Area Home Owners Assn. et al. v. Schwab, Jr., et al., and Scrivener et al., As Members of Board, etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although finding need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

§ 5-415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

#### NOTES TO DECISIONS

Purpose of hearings 1  
Notice of hearing 2

##### 1. Purpose of hearings

A purpose of zoning hearings is to explore subject such as limitations with respect to floor area ratio or limitation of lot occupancy in connection with proposed changes in zoning regulations. *S. J. Aquino v. Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

That substantial changes were made in zoning proposals originally put forward did not invalidate changes in regulations rezoning as "R-4", wherein only certain types of residential construction were permitted, lots formerly zoned "first commercial", where rezoning was purpose of hearing, even though original proposals did not require limitation on floor area ratio or lot occupancy and rezoning as adopted did. *Id.*

##### 2. Notice of hearing

Statutory requirement that District of Columbia Commissioners give such notice, in addition to notice published in newspaper, of zoning hearing as Commission deems feasible and practical is not mandatory, but whether and what kind of added notice will be given in particular case is in discretion of Commission. *S. J. Aquino v. Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

Zoning Commission's failure to give additional notice beyond newspaper publication of notice of hearing on zoning regulation changes was not abuse of discretion in absence of showing that giving of additional notice was feasible and practical, particularly in view of fact that hearing was attended by considerable publicity. *Id.*



**§ 5-420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.**

**NOTES TO DECISIONS**

Arbitrary or capricious 2  
Hardship 7.50  
Reasons for decision 9.50

**2. Arbitrary or capricious**

Board of zoning adjustment opinion that relief from zoning ordinance to permit use of house as professional office could not be granted without substantial detriment to public good and without substantially impairing intent, purpose, and integrity of zoning plan relating to neighborhood which largely conformed with its residential zoning was reasonable, and court erred in substituting its own contrary opinion. *R. O. Clouser et al., as Members of Board of Zoning etc. v. King David* (1962, 309 F. 2d 233, — U.S. App. D.C. —).

**7.50. Hardship**

Hardship not resulting from location, situation, or condition of property, but solely from owner's appropriation of it for commercial purposes without first having obtained necessary zoning change was not such "hardship" as to justify variance. *R. O. Clouser et al., as Member of Board of Zoning etc. v. King David* (1962, 309 F. 2d 233, — U.S. App. D.C. —).

**9.50. Reasons for decision**

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al. and Woodley Hill Area Home Owners Ass'n. et al. v. Schwab, Jr., et al., and Scrivener et al., as Members of Board etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although findings need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

**Chapter 5.—UNSAFE STRUCTURES**

**§ 5-501. Structure reported unsafe, to be examined by inspector of buildings—If unsafe, notice to be given to make same secure—If safety requires, inspector may make secure.**

**NOTES TO DECISIONS**

Party wall 2  
Priority of lien for cost of razing 3  
Reimbursement for razing unsafe building 4

**2. Party wall**

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. *District of Columbia and First Baptist Church of the City of Washington, D.C. v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

**3. Priority of lien for cost of razing**

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right

to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501-3 Fourteenth Street Cooperative Ass'n. v. Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

**4. Reimbursement for razing unsafe building**

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501-3 Fourteenth Street Cooperative Ass'n. v. Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

**§ 5-502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.**

**NOTES TO DECISIONS**

**1. Party wall**

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C., v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

**§ 5-503. Inspector of buildings to make structure safe if responsible person does not—Cost and expense—How assessed—Neglect of lessee—Rights of lessor.**

**NOTES TO DECISIONS**

**Party wall 1**

Priority of lien for cost of razing 2  
Reimbursement for razing unsafe building 3

**1. Party wall**

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C. v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

**2. Priority of lien for cost of razing**

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501-3 Fourteenth Street Cooperative Ass'n. v. Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

**3. Reimbursement for razing unsafe building**

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501-3 Fourteenth Street Cooperative Ass'n. v. Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

**Chapter 7.—HOUSING REDEVELOPMENT**

**§ 5-701. General purposes.**

**NOTES TO DECISIONS**

**3. Tort actions**

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).



**§ 5-704. Power to acquire and assemble real property.****NOTES TO DECISIONS****7.50. Tort actions**

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

**§ 5-715. Appropriations authorized.****NOTES TO DECISIONS****1. Tort actions**

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

**Chapter 9.—HORIZONTAL PROPERTY REGIMES****Sec.**

- 5-901. Short title.
- 5-902. Definitions.
- 5-903. Horizontal property regimes.
- 5-904. Status of condominium units within a horizontal property regime.
- 5-905. Joint tenancies, tenancies in common, tenancies by the entirety.
- 5-906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.
- 5-907. Indivisibility of common elements—Limitation upon partition.
- 5-908. Use of elements held in common, right to repair common elements.
- 5-909. Condominium subdivision.
- 5-910. Reference to plat.
- 5-911. Termination and waiver of regime.
- 5-912. Merger no bar to reconstitution.
- 5-913. Bylaws, availability for examination.
- 5-914. Necessary contents of bylaws—Modification of system.
- 5-915. Books of receipts and expenditures—Availability for examination.
- 5-916. Common profits, contributions for payment of common expenses of administration and maintenance.
- 5-917. Priority of liens.
- 5-918. Joint and several liability of purchaser and seller for amounts owing under section 16—Purchaser's recovery, purchaser's or lender's right to a statement setting forth amount due.
- 5-919. Supplementary method of enforcement of lien.
- 5-920. Insuring building against risks—Individual rights of co-owners.
- 5-921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.
- 5-922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.
- 5-923. Separate taxation.
- 5-924. Actions—Right to separate release of judgment.
- 5-925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.
- 5-926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.
- 9-927. Supplement of existing code provisions.
- 5-928. Regulations of the Board of Commissioners and the zoning commission.
- 5-929. Interpretation.
- 5-930. Supplemental provisions relating to sewer and water services.

**Sec.**

- 5-931. Authority of Board of Commissioners under Reorganization Plan Numbered 5 of 1952.
- 5-932. Severability.
- 5-933. Effective date.

**§ 5-901. Short title—Citation of chapter.**

That this chapter, including the following table of contents, may be cited as the "Horizontal Property Act of the District of Columbia". (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 1.)

**REFERENCE IN TEXT**

The "following table of contents" refers to the section analysis set out above this section.

**EFFECTIVE DATE**

See section 5-933.

**§ 5-902. Definitions.**

Unless it is plainly evident from the context that a different meaning is intended, as used herein—

(a) "Unit" or "condominium unit" means an enclosed space, consisting of one or more rooms, occupying all or part of a floor in buildings of one or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, and shall include such accessory units as may be appended thereto, such as garage space, storage space, balcony, terrace or patio: *Provided*, That said unit has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(b) "Condominium" means the ownership of single units in a multiunit structure with common elements.

(c) "Condominium project" means a real estate condominium project; a plan or project whereby five or more apartments, rooms, office spaces, or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(d) "Co-owner" means a person, persons, corporation, trust, or other legal entity, or any combination thereof, that owns a condominium unit within the building.

(e) "Council of co-owners" means the co-owners as defined in subsection (d) of this section, acting as a group in accordance with the provisions of this chapter and the bylaws and declaration established thereunder; and a majority, as defined in subsection (k) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions.

(f) "General common elements" except as otherwise provided in the plat of condominium subdivision, means and includes—

(1) the land on which the building stands in fee simple or leased provided that the leasehold interest of each unit is separable from the leasehold interests of the other units;

(2) the foundations, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, stairways, and entrance and exit or communication ways;

(3) the basements, flat roofs, yards, and gardens except as otherwise provided or stipulated;

(4) the premises for lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;



(5) the compartments or installations of central services such as power, light, gas, cold and hot water, heating, central air conditioning or central refrigeration, swimming pools, reservoirs, water tanks and pumps, and the like;

(6) the elevators, garbage and trash incinerators and, in general, all devices or installations existing for common use; and

(7) all other elements of the building rationally of common use or necessary to its existence, upkeep, and safety.

(g) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of condominium units, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like.

(h) "Majority of co-owners", "two-thirds of the co-owners", and "three-fourths of the co-owners" mean, respectively, 51, 66%, and 75 per centum or more of the votes of the co-owners computed in accordance with their percentage interests as established under section 6 of this chapter.

(i) "Plat of condominium subdivision" means the plat of the surveyor of the District of Columbia establishing the condominium units, accessory units, general common elements, and limited common elements.

(j) "Person" means a natural individual, corporation, trustee, or other legal entity or any combination thereof.

(k) "Developer" means a person that undertakes to develop a real estate condominium project.

(l) "Property" means and includes the lands whether leasehold, if separable as defined in (f) (1) of this section, or in fee simple, the building, all improvements and structures thereon, and all easements, rights, and appurtenances thereunto belonging.

(m) "To record" means to record in accordance with the provisions of section 45-501.

(n) "Common expenses" means and includes—

(1) all sums lawfully assessed against the unit owners by the council of co-owners;

(2) expenses of administration, maintenance, repair, or replacement of the common areas and facilities, including repair and replacement funds as may be established;

(3) expenses agreed upon as common expenses by the council of co-owners;

(4) expenses declared common expenses by the provisions of this chapter or by the bylaws.

(o) "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after deduction of the common expenses.

(p) All words used herein include the masculine, feminine, and neuter genders and include the singular or plural numbers, as the case may be. (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 2.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-903. Horizontal property regimes.

Whenever the owners or the co-owners of any square or lot shall subdivide the same into a con-

dominium project in conformity with section 5-909 with a plat of condominium subdivision there shall be established a horizontal property regime. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 3.)

#### § 5-904. Status of condominium units within a horizontal property regime.

Once the property is subdivided into the horizontal property regime, a condominium unit in the building may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the building of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 4.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-905. Joint tenancies, tenancies in common, tenancies by the entirety.

Any condominium unit may be held and owned by more than one person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 5.)

#### § 5-906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.

(a) A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

(b) Said percentage interest shall not be separated from the unit to which it appertains.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the building, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the Government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(d) The said basic value of said undivided common interest shall be fixed for the purposes of this chapter and shall not fix the market value of the individual condominium units and undivided share interests and shall not prevent each co-owner from



fixing a different circumstantial value to his condominium unit and undivided share interest in the common elements, in all types of acts and contracts.

(e) In addition to the foregoing provisions, the declaration may contain other provisions and attachments relating to the condominium and to the units which are not inconsistent with this chapter.

(f) Voting at all meetings of the co-owners shall be on a percentage basis, and the percentage of the vote to which each co-owner is entitled shall be the individual percentage assigned to his unit in the declaration.

(g) Individual condominium unit deeds may make reference to this chapter, the condominium subdivision and land subdivision plats referred to in section 5-910 hereof, the declaration provided for in this section, the bylaws of the council of co-owners, and the deeds may include any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 6.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-907. Indivisibility of common elements—Limitation upon partition.

(a) The common elements, both general and limited, shall remain undivided. No unit owner, or any other person, shall bring any action for partition or division of the co-ownership permitted under section 93 and related provisions of the Act of March 3, 1901 (31 Stat. 1203), as amended by the Act of June 30, 1902 (32 Stat. 523, ch. 1329), against any other owner or owners of any interest or interests in the same horizontal property regime so as to terminate the regime.

(b) Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more units in a regime as to the individual ownership of such unit or units without terminating the regime or as to the ownership of property outside the regime: *Provided*, That upon partition of any such individual unit the same shall be sold as an entity and shall not be partitioned in kind. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 7.)

#### REFERENCE IN TEXT

The section of the act referred to in the text is now set out as section 16-2901 of the Code.

#### EFFECTIVE DATE

See section 5-933.

#### § 5-908. Use of elements held in common, right to repair common elements.

(a) Each co-owner may use the elements held in common in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(b) The manager, board of directors or of administration, as the case may be, shall have an irrevocable right and an easement to enter units to make repairs to common elements or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 8.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-909. Condominium subdivision.

(a) Whenever the owner or the co-owners of any square or lot duly subdivided in conformity with section 1-620 or other applicable laws of the District of Columbia, shall deem it necessary to subdivide the same into a condominium project of convenient condominium units for sale and occupancy and means of access for their accommodation, he may cause a plat or plats to be made by the surveyor of the District of Columbia, on which said plats, together, shall be expressed—

(1) the ground dimensions as set forth under such section 1581 and the exterior lengths of all lines of the building;

(2) for each floor of the condominium subdivision, the number or letter, dimensions, and lengths of finished interior surfaces of unit dividing walls of the individual condominium units; the elevations (or average elevation, in case of slight variance) from a fixed known point, of finished floors and of finished ceilings of such condominium units situate upon the same floor, and further expressing the area, the relationship of each unit to the other upon the same floor and their relationship to the common elements upon said floor;

(3) the dimensions and lengths of the interior finished surface of walls, elevations, from said same fixed known point, of the finished floors and of the finished ceilings of the general common elements of the building, and, in proper case, of the limited common elements restricted to a given number of condominium units, expressing which are those units;

(4) any other data necessary for the identification of the individual condominium units and the general and limited common elements.

(b) And said owners or co-owners may certify such condominium subdivisions under their hands and seals in the presence of two credible witnesses, upon the same plat or on a paper or a parchment attached thereto. And the same shall thereupon be put up, labeled, indexed, and preserved for record and deposit with the office of the surveyor for the District of Columbia in like manner as land subdivisions have been heretofore recorded or in such other books as the said surveyor may prescribe. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 9.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-910. Reference to plat.

When a plat of a condominium project and subdivision shall be so certified, examined, and recorded, the purchaser of any condominium unit thereof or any person interested therein, may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and the original proprietors and in the same manner as has been heretofore the practice for land subdivisions: *Provided*, That said purchaser or other person interested therein shall also make reference to the plat of land subdivision appearing prior to the establishment of the condominium subdivision thereupon. Any such conveyance of an individual condominium unit shall be deemed to also convey the undivided interest of the owner in the common ele-



ments, both general and limited, and of any accessory units, if any, appertaining to said condominium unit without specifically or particularly referring to the same. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 10.)

#### § 5-911. Termination and waiver of regime.

(a) All the co-owners or the sole owner of a building constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of two credible witnesses, upon the same plat or upon a paper or parchment attached thereto: *Provided*, That the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment: *Provided further*, That should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver: *Provided further*, That if within ninety days of the date of such damage or destruction:

(1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in sections 5-921 and 5-922 or,

(2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of section 5-921 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the United States District Court for the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served as provided in section 5-914(g). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(b) In the event a horizontal property regime is terminated or waived, the property shall be deemed

to be owned in common by the co-owners, and the undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements in the property as set forth in the declaration under section 6 hereof.

(c) Upon such termination and waiver the provisions of section 5-910 shall no longer be applicable and reference to the principal property thereupon, shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by section 5-907 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 11.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-912. Merger no bar to reconstitution.

The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 12.)

#### § 5-913. Bylaws, availability for examination.

(a) The administration of every building constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in section 5-906 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(b) A true copy of said bylaws shall be annexed to the declaration referred to in section 5-906 and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

(c) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager, the administrator, board of directors or of administration, or as specified in the bylaws or in proper case, by an aggrieved unit owner. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 13.)

#### EFFECTIVE DATE

See section 5-933.



### § 5-914. Necessary contents of bylaws—Modification of system.

(a) The bylaws must necessarily provide for at least the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors, or of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

(2) Method of calling or summoning the co-owners to assemble; that a majority of co-owners is required to adopt decisions, except as otherwise provided in this chapter; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

(3) Care, upkeep, and surveillance of the building and its general or limited common elements and services.

(4) Manner of collecting from the co-owners for the payment of common expenses.

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the building and for the proper care of the general or limited common elements and to provide services for the building.

(6) Such restrictions on or requirements respecting the use and maintenance of the units and the use of the common elements as are designed to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners.

(7) Designation of person authorized to accept service of process in any action relating to two or more units or to the common elements as authorized under section 5-924. Such person must be a resident of and maintain an office in the District of Columbia.

(8) Notice as to the existence or nonexistence of a declaration in trust for the enforcement of the lien for common expenses permitted under section 5-919.

(b) The sole owner of the building, or if there be more than one, the co-owners representing two-thirds of the votes provided for in section 5-906 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 14.)

#### EFFECTIVE DATE

See section 5-933.

### § 5-915. Books of receipts and expenditures—Availability for examination.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be

set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 15.)

### § 5-916. Common profits, contributions for payment of common expenses of administration and maintenance.

(a) The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentages established by section 5-906: *Provided*, That for purposes of the application of the District of Columbia Income and Franchise Tax Act of 1947 (61 Stat. 331), as amended, the council of co-owners shall, in accordance, with the provisions of said Act, be regarded as constituting an unincorporated business and shall file returns and pay taxes upon the taxable income derived from the common areas without regard to the "common profits" as defined in this chapter.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the building and toward any other expenses lawfully agreed upon by the council of co-owners.

(c) No owner shall be exempt from contributing toward such common expenses by waiver of the use or enjoyment of the common elements both general and limited, or by the abandonment of the condominium unit belonging to him.

(d) Said contribution may be determined, levied, and assessed as a lien on the first day of each calendar or fiscal year, and may become and be due and payable in such installments as the bylaws may provide, and said bylaws may further provide that upon default in the payment of any one or more of such installments, the balance of said lien may be accelerated at the option of the manager, board of directors, or of management and be declared due and payable in full. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 16.)

#### REFERENCE IN TEXT

The Franchise Tax Act referred to in subsection (a) is the act described in the note to section 47-1551 under the heading "Short Title".

#### EFFECTIVE DATE

See section 5-933.

### § 5-917. Priority of liens.

The lien determined, levied and assessed in accordance with section 5-916 shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

(a) Real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and water charges and sanitary sewer service



charges levied on the condominium unit, and judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this subparagraph.

(b) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the condominium unit prior to the assessment of the lien thereon or duly recorded on said unit after receipt of a written statement from the manager, board of directors, or of management reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

Upon a voluntary sale or conveyance of a condominium unit all unpaid assessments against a grantor co-owner for his pro rata share of the expenses to which section 5-916 refers shall first be paid out of the sales price or by the grantee in the order of preference set forth above. Upon an involuntary sale through foreclosure of a deed of trust, mortgage, or encumbrance having preference as set forth in subparagraph (b) of this section a purchaser thereunder shall not be liable for any installments of such lien as became due prior to his acquisition of title. Such arrears shall be deemed common expenses, collectible from all co-owners, including such purchaser. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 17.)

#### EFFECTIVE DATE

See section 5-933.

**§ 5-918. Joint and several liability of purchaser and seller for amounts owing under section 16—Purchaser's recovery, purchaser's or lender's right to a statement setting forth amount due.**

The purchaser of a condominium unit in a voluntary sale shall be jointly and severally liable with the seller for the amounts owing by the latter under section 5-916 upon his interest in the condominium unit up to the time of conveyance; without prejudice to the purchaser's right to recover from the other party the amounts paid by him as such joint debtor: *Provided*, That any such purchaser, or a lender under a deed of trust, mortgage, or encumbrance, or parties designated by them, shall be entitled to a statement from the manager, board of directors, or of administration, as the case may be, setting forth the amount of unpaid assessments against the seller or borrower, and the unit conveyed or encumbered shall not be subject to a lien for any unpaid assessment in excess of the amount set forth. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 18.)

**§ 5-919. Supplemental method of enforcement of lien.**

(a) In addition to proceedings available at law or equity for the enforcement of the lien established by section 5-916, all the owners of property constituted into a horizontal property regime may execute bonds conditioned upon the faithful performance and payment of the installments of the lien permitted by section 5-916 and may secure the payment of such obligations by a declaration in trust recorded among

the land records of the District of Columbia, granting unto a trustee or trustees appropriate powers to the end that upon default in the performance of such bond, said declaration in trust may be foreclosed by said trustee or trustees, acting at the direction of the manager, board of directors, or of management, as is proper practice in the District of Columbia in foreclosing a deed of trust.

(b) And the bylaws may require in the event such bonds have been executed and such declaration in trust is recorded that any subsequent purchaser of a condominium unit in said horizontal property regime shall take title subject thereto and shall assume such obligations: *Provided*, That the said lien, bond, and declaration in trust shall be subordinate to and a junior lien to liens for real estate taxes and other taxes arising out of or resulting from the ownership, use, or operation of the common areas, liens for special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and liens for water charges and sanitary sewer service charges levied on the condominium unit, and to judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and to judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this section then or thereafter accruing against the unit and to the lien of any duly recorded deeds of trust, mortgages, or encumbrances previously placed upon the unit and said lien, bond, and declaration in trust shall be and become subordinate to any subsequently recorded deeds of trust, mortgages, or encumbrances: *Provided*, That the lender thereunder shall first obtain from the manager, board of directors, or of administration a written statement as provided in section 5-918 reflecting that payments due under this lien are current as of the date of recordation of such subsequent deed of trust, mortgage, or encumbrance. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 19.)

#### EFFECTIVE DATE

See section 5-933.

**§ 5-920. Insuring building against risks—Individual rights of co-owners.**

The manager or the board of directors, if required by the bylaws or by a majority of the co-owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the council of co-owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for



his benefit. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 20.)

**§ 5-921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.**

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the building.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the buildings and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 21.)

**EFFECTIVE DATE**

See section 5-933.

**§ 5-922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.**

Where the building is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new building costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under section 5-917. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 22.)

**§ 5-923. Separate taxation.**

(a) For the purposes of assessment and taxation of property constituted into a horizontal property regime and to conform to the system of numbering squares, lots, blocks, and parcels for taxation purposes in effect in the District of Columbia, each condominium unit duly situate upon a subdivided lot and square shall bear a number or letter that will distinguish it from every other condominium unit situate in said lot and square.

(b) Each of said condominium units shall be carried on the records of the District of Columbia as a separate and distinct entity and all real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads,

and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, shall be assessed, levied, and collected against each of said several separate and distinct units in conformity with the percentages of co-ownership established by section 5-906, and in accordance with the provisions of law in effect in the District of Columbia relating to assessment, levying, and collection of real property taxes.

(c) The council of co-owners shall be liable for the filing of returns and payment of the tax on personal property located in the common areas and held for use or used in a trade or business or held for sale or rent.

(d) The title to an individual condominium unit shall not be divested or in anywise affected by the forfeiture or sale of any or all of the other condominium units for delinquent real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas; special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, or water charges and sanitary sewer service charges: *Provided*, That the real estate taxes, the duly levied share of such other taxes and of such special assessments, and the water and sanitary sewer service charges on or against said individual condominium unit are currently paid. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 23.)

**EFFECTIVE DATE**

See section 5-933.

**§ 5-924. Actions—Right to separate release of judgment.**

(a) Without limiting the right of any co-owner, actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager, or board of directors, or of administration with respect to any cause of action relating to the common elements or more than one unit.

(b) Service of process on two or more unit owners in any action relating to the common elements may be made on the person designated in the bylaws in conformity with section 5-914(g).

(c) In the event of entry of a final judgment as a lien against two or more unit owners, the unit owners of the separate units may remove their unit and their percentage interest in the common elements from the lien thereof by payment of the fractional proportional amounts attributable to each of the units affected. Said individual payment shall be computed by reference to the percentage established pursuant to section 5-906. After such partial payment, partial discharge, or release or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of the lien of such judgment.

(d) Such partial payment, satisfaction, or discharge shall not prevent such a judgment creditor from proceeding to enforce his rights against any



unit and its percentage interest in the common elements not so paid, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 24.)

## EFFECTIVE DATE

See section 5-933.

§ 5-925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.

(a) Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created and enforced only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership: *Provided*, That no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the provisions of section 38-101, against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the council of co-owners, the manager, or board of directors in accordance with this chapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the provisions of section 38-101, against each of the units and shall be subject to the provisions of subparagraph (b) hereunder. Notice of said lien may be served on the person designated in conformity with section 5-914 (g).

(b) In the event of filing of a lien against two or more units and their respective percentage interest in the common elements, the unit owners of the separate units may remove their unit and their percentage interest in the common elements appurtenant thereto from the said lien by payment, or may file a written undertaking with surety approved by the court as provided in section 38-118, of the fractional or proportional amounts attributable to each of the units affected. Said individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to section 5-906. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 25.)

## EFFECTIVE DATE

See section 5-933.

§ 5-926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.

The rule of property known as the rule against perpetuities, and the rule of property known as the rule restricting unreasonable restraints on alienation, sections 45-102 and 45-104, shall not be applied to defeat any of the provisions of this chapter, or of any declaration, bylaws, or other document executed in accordance with this chapter as to the condominium project. This exemption shall not apply to estates in the individual condominium units. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 26.)

§ 5-927. Supplement of existing code provisions.

The provisions of the chapter shall be in addition to and supplemental to all other provisions of law of the District of Columbia and wheresoever there appears in the provisions the words "square", "lot", "land", "ground", "parcel", "property", "block", or other designation denoting a unit of land, where appropriate to implement this chapter, after such descriptive terms, there shall be deemed inserted reference to a condominium unit, condominium subdivision, or horizontal property regime, whichever shall be appropriate to effect the ends and purposes of this chapter: *Provided*, That wherever the application of the provisions of this chapter conflict with the application of such other provisions, the provisions of law generally applicable to buildings in like use in the District of Columbia shall prevail. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 27.)

## EFFECTIVE DATE

See section 5-933.

§ 5-928. Regulations of the Board of Commissioners and the zoning commission.

In order to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia, the Board of Commissioners of the District of Columbia and the Zoning Commission of the District of Columbia are each hereby authorized to adopt and enforce such regulations as either deems proper, within its respective general authority. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 28.)

§ 5-929. Interpretation.

(a) This chapter shall be interpreted in such a manner as to require each condominium unit and each horizontal property regime to be in compliance with all District of Columbia laws and regulations relating to property of like type, whether it be designed for residence, for office, for the operation of any industry or business, or for any other use. The owner of each condominium unit shall be responsible for the compliance of his unit with such laws and regulations, and the council of co-owners and any person designated by them to manage the regime shall be jointly and severally liable for compliance with all such laws and regulations in all matters relating to the common elements of the regime.

(b) Notwithstanding any provision of this chapter, the owner of each condominium unit shall have



the same responsibility for the payment of all taxes, assessments, and other charges due to the District of Columbia as does any other person or property owner similarly situated.

(c) Notwithstanding any provision of this chapter, the method of enforcement available to the District of Columbia to collect any tax or assessment or any charge from any individual property owner or any building owner shall be available to collect taxes, assessments, and charges from individual condominium unit owners and from the council of co-owners.

(d) Nothing contained in this chapter shall in any way be construed as affecting the right to institute and maintain eminent domain proceedings. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 29.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-930. Supplemental provisions relating to sewer and water services.

(a) Notwithstanding any provision of this chapter, the developer or co-owners of any horizontal property regime shall have the right to have installed for each and every individual unit a separately metered water service. Such installations shall be subject to all laws and regulations then or thereafter in effect in the District of Columbia. Upon the establishment of such separate water services each unit owner and his successor in title and persons occupying such units shall be responsible for the payment to the District of Columbia of all water and sewer charges rendered and the Commissioners of the District of Columbia are authorized to enforce any and all of the remedies for collection of such charges as are authorized by law.

(b) A common water service is hereby expressly authorized for any horizontal property regime and in the event that a horizontal property regime is provided with a common water service to the charges for sewer and water service shall be billed to the person designated by the co-owners, pursuant to the bylaws, to manage the regime. In the event that the entire sewer and water charges are not paid

within the time specified by law for the payment of sewer and water charges, the Commissioners shall be authorized to enforce payment in any manner authorized by law, including, but not limited to, the assessment of an additional charge for late payment, the shutting off of water to the regime and the enforcement of the liens for nonpayment of such charges against the individual units in conformity with the percentage of co-ownership established by section 5-906. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 30.)

#### EFFECTIVE DATE

See section 5-933.

#### § 5-931. Authority or Board of Commissioners Under Reorganization Plan Numbered 5 of 1952.

Nothing in this chapter or in any amendments made by this chapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 31.)

#### § 5-932. Severability.

If any provision of this chapter, or any section, sentence, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 32.)

#### § 5-933. Effective date.

This chapter shall take effect one hundred and twenty days after its enactment. [December 21, 1963.] (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 33.)

## TITLE 6.—HEALTH AND SAFETY

### Chapter 1.—HEALTH DEPARTMENT— ORGANIZATION

Sec.

6-119j-1. Immediate treatment of minor with venereal disease.

§ 6-112. Certain ordinances, rules, and regulations of Board of Health, legalized and made valid.

#### PARTIAL REPEAL

Commissioners order dated Aug. 14, 1962, number 62-1459, repealed sections 12 and 12a of the Health Regulation known as "An Ordinance to prevent the sale of unwholesome food in the cities of Washington and Georgetown", as amended, be and they are hereby repealed. This repeal was made pursuant to authority of section 6-114.

§ 6-119j-1. Immediate treatment of minor with venereal disease.

If a minor appears in any clinic, hospital, or other facility of the Department of Public Health of the government of the District of Columbia, and the Director of Public Health or his authorized agent, after having caused a medical examination to be made of such minor, has probable cause to believe that such minor is affected with a venereal disease or is a carrier of a venereal disease, and if, as a result of such examination, the Director of Public Health or his authorized agent determines that immediate medical treatment of the minor will adequately control the disease of the minor so as to protect his health and the health of others without having said minor detained as provided in sections 6-118 to 6-119k, the Director of Public Health or his authorized agent shall present to such minor a paper, upon which such minor shall state either (1) that he consents to such treatment, in which event such treatment shall be given to the minor forthwith, or (2) that he refuses to consent to such treatment, in which event no such treatment shall be given to him pursuant to this section. The Di-

rector of Public Health or his authorized agent shall exercise reasonable diligence in ascertaining the whereabouts of a parent, or of a person standing in loco parentis to such minor, and if such whereabouts are ascertained shall as soon as practical notify such parent or loco parentis that such minor is affected with a venereal disease, or is a carrier of a venereal disease, and whether he has received or refused such treatment. (Aug. 11, 1939, ch. 691, § 13, as added Oct. 11, 1963, 77 Stat. 246, Pub. L. 88-137, § 1.)

#### COMMISSIONERS AUTHORITY NOT AFFECTED

Section 3 of act Oct. 11, 1963, provides as follows:

Nothing in this Act [renumbering section 13 as 14 (6-119k) adding a new section 13 (6-119j-1)] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners, or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

§ 6-119k. Construction of provisions.

Each and every provision of section 6-118 to 6-119k shall be construed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation. (Aug. 11, 1939, ch. 691, § 14, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Renumbered Oct. 11, 1963, 77 Stat. 246, Pub. L. 88-137, § 1.)

#### AMENDMENTS

1963—Section 1 of act Oct. 11, 1963, amended section by changing the section number from 13 to 14 and inserting a new section 13 classified as section 6-119j-1. Section 2 of the same act, amended section 3 of the act of Aug. 8, 1946, 60 Stat. 919, so that the words in section 3 reading "renumbered as section 13" now reads "renumbered as section 15."





## TITLE 7.—HIGHWAYS, STREETS, BRIDGES

### Chapter 6.—REPAIR AND CONSTRUCTION

§ 7-608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

The Commissioners of the District of Columbia are authorized and empowered, whenever in their judgment the public health, safety, or comfort require it, or whenever application shall be made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks in the District of Columbia of such form and materials as they may determine, and to pay the total cost of such work from appropriations for assessment and permit work.

Said commissioners shall give notice by advertisement, twice a week for two weeks in some newspaper published in the city of Washington, of any assessment work proposed to be done by them under this section, designating the location and the kind of work to be done, specifying the kind of materials to be used, the estimated cost of the improvement, and fixing a time and place when and where property-owners to be assessed can appear and present objections thereto, and for hearing thereof. One-half of the total cost of the assessment work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property: *Provided*, That no such assessment shall be levied against abutting property for the cost of repairing alleys or sidewalks when the damage requiring such repair is caused by the growth of roots of trees on public space or the cause of such damage is otherwise beyond the control of the owner of such property.

(Sept. 25, 1962, 76 Stat. 598, Pub. L. 87-700; § 1.)

#### AMENDMENTS

Section 1 of act Sept. 25, 1962, amended the second sentence in the second paragraph of the section to relieve abutting property owners from assessment for repairs to alleys and sidewalks where the cause of the damage is beyond their control or where it is caused by roots of trees on public space. The language of the amendment is set out above beginning with the words "said property" preceding the proviso clause and ending with "such property" at the end of the proviso clause.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of act Sept. 25, 1962, provides: "This Act shall take effect ten days after its approval."

#### APPLICABILITY OF 1962 AMENDMENT

Section 2 of act Sept. 25, 1962, provides: "That the amendment made by the first section of this Act [set out in this section] shall apply to repairs to alleys or

to sidewalks the completion of which repairs shall occur on or after the effective date of this Act."

### Chapter 8.—REMOVAL OF SNOW AND ICE

§ 7-802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand and ashes.

#### NOTES TO DECISIONS

##### 6. Liability

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley v. United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

§ 7-803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

#### NOTES TO DECISIONS

##### 2. Responsibility for removal

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley v. United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

### Chapter 12.—MISCELLANEOUS

§ 7-1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.

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(3) After construction, the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed; and

(4) The portions of such streets planned or projected as above which lie within a right-of-way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right-of-way have been similarly dedicated or otherwise acquired.

(Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1; July 25, 1956, 70 Stat. 638, ch. 720, § 1.)

#### CODIFICATION

Clauses (3) and (4) of paragraph 2 of this section are set out in this supplement to correct typographical errors which appear in these clauses as they are set out in the main volume of the Code.

§ 7-1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

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#### BRANCH SIDINGS OVER FIRST STREET SOUTHWEST

That the Philadelphia, Baltimore, and Washington Railroad Company is hereby authorized to construct, maintain, and operate at grade two branch sidings from its present tracks in square 607 over First Street to square 663 between S and T Streets Southwest, Washington,



D.C. Such sidings shall be constructed in accordance with plans approved by the Commissioners of the District of Columbia.

SEC. 2. Congress reserves the right to alter, amend, or repeal this Act. (Sept. 26, 1961, 75 Stat. 686, Pub. L. 87-325, §§ 1, 2.)

**§ 7-1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.**

**CROSS REFERENCE**

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

**§ 7-1236. Employment of temporary laborers and mechanics—Per diem rate of pay.**

**CROSS REFERENCE**

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

**§ 7-1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.**

**CROSS REFERENCE**

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

**§ 7-1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.**

**CROSS REFERENCE**

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

**Chapter 14.—PUBLIC AIRPORT**

Sec.

- 7-1401. Construction and operation of airport authorized.
- 7-1402. Selection of site.
- 7-1403. Acquisition and construction of facilities.
- 7-1404. Maintenance and operation.
- 7-1405. Lease of space or property.
- 7-1406. Contracts for supplies and services.
- 7-1407. Transfers of property by federal agencies.
- 7-1408. Authority to make arrests—Park Police patrol.
- 7-1409. Agreements for municipal services.
- 7-1410. Penalty for violations.
- 7-1411. Definitions.
- 7-1412. Appropriations authorized.

**§ 7-1401. Construction and operation of airport authorized.**

Administrator of the Federal Aviation Agency (hereinafter referred to as the "Administrator") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1; Aug. 23, 1958, 72 Stat. 807 Pub. L. 85-726, § 1402(g).)

**AMENDMENT**

1958—Act Aug. 23, 1958, amended the section by striking the words "Secretary of Commerce" and inserting in lieu the words "Administrator of the Federal Aviation Agency" and by striking the word "Secretary" and inserting in lieu the word "Administrator".

**§ 7-1402. Selection of site.**

For the purpose of carrying out this chapter, the Administrator is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or air-space rights, as may be necessary or desirable for the construction, maintenance, improvement, operation and protection of the airport: *Provided*, That before making commitments for the acquisition of land, or the transfer of any lands, the Administrator shall consult and advise with the National Capital Park and Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within thirty days: *Provided further*, That the choice of site by the Administrator shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

**AMENDMENT**

1958—Act Aug. 23, 1958, amended section by striking the word "Secretary" wherever same appeared and inserting in lieu the word "Administrator".

**TRANSFER OF FUNCTIONS**

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1-1009.

**§ 7-1403. Acquisition and construction of facilities.**

For the purposes of this chapter, the Administrator is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), rights-of-way or easements for roads, trails, pipe lines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

The Administrator is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a State or political subdivision thereof, such street, highway, or roadway may be



transferred to such State or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such State or political subdivision thereof. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 3; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared in the section and substituted the word "Administrator" in lieu thereof.

#### NOTES TO DECISIONS

##### 1. Standing to sue

Where none of plaintiff's land was sought to be condemned, his suit to enjoin taking of property, more than one-half mile distant from his own land, for use as airport, did not present a "justiciable controversy", and his suit was premature. *Jasper v. Sawyer et al.* (1953, 92 U.S. App. D.C. 94, 205 F. 2d 700).

#### § 7-1404. Maintenance and operation.

The Administrator shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: *Provided*, That the authority herein contained may be delegated by the Administrator to such official or officials of the Federal Aviation Agency as the Administrator may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared and substituted the word "Administrator," also struck out the words "Department of Commerce" and inserted in lieu the words "Federal Aviation Agency".

#### § 7-1405. Lease of space or property.

The Administrator is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: *Provided*, That no lease for the use of any hangar or space therein shall extend for a period exceeding three years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

#### § 7-1406. Contracts for supplies and services.

The Administrator is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public. No such contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than five years, except the restaurant. The provisions of section 5 of title 41, U.S. Code, shall not apply to contracts authorized under this section, to leases authorized

under section 7-1405 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 6; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

#### § 7-1407. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the Federal Government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Administrator, without compensation, upon his request, any lands, interests in lands (including aviation easements or air-space rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Administrator may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

#### § 7-1408. Authority to make arrests—Park Police patrol.

(a) The Administrator and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses and in the same manner and circumstances as are provided in this section with respect to employees designated by the Administrator.

(d) The officer on duty in command of those employees designated by the Administrator as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Commissioner; and such



collateral shall be deposited with such United States Commissioner. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in subsection (a), (b), and (d); substituted "Federal Aviation Agency" for "Department of Commerce" in subsection (a) and amended subsection (c) to read as above set out.

## NOTES TO DECISIONS

## 1. Arrest without warrant

A motorist, who had received a summons from an officer to appear before a court commissioner to answer a charge of a parking violation, could not be validly arrested without a warrant for failure to post collateral. *P. Y. Craig v. J. T. Cox & A. C. Doak* (D.C. Mun. App. 1961, 171 A. 2d 259).

Bail follows arrest, and is not given to avoid an arrest. *Id.*

## § 7-1409. Agreements for municipal services.

The Administrator may enter into agreements with the State, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such State or municipal services as the Administrator shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however*, That where the charge for any such service is established by the laws of the State, the Administrator may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

## § 7-1410. Penalty for violations.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Administrator under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500 or to imprisonment not exceeding six months, or to both such fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

## § 7-1411. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11.)

## REFERENCES IN TEXT

Civil Aeronautics Act of 1938, as amended, referred to in the text, which was classified to U.S. Code, Title 49, § 401 et seq., was repealed and is now covered by U.S. Code, Title 49, § 1301 et seq.

## § 7-1412. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; as amended July 11, 1958, 72 Stat. 354, Pub. L. 85-511, § 1.)

## AMENDMENT

1958—Act July 11, 1958, removed the limitation on the amount authorized to be appropriated for construction.

## TITLE 8.—PARKS AND PLAYGROUNDS

### Chapter 1.—PARKS AND PLAYGROUNDS

§ 8-115. Transfer of jurisdiction over property between United States and District of Columbia.

Federal and District authorities administering properties within the District of Columbia owned by the United States or by the said District are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon: *Provided*, That prior to the consummation of any transfer hereunder such proposed transfer shall be recommended by the National Capital Planning Commission: *Provided further*, That all such transfers and agreements shall be reported to Congress by the District authorities concerned. (May 20, 1932, ch. 197, § 1, 47 Stat. 161, as amended June 6, 1924, ch. 270, § 9 as added July 19, 1952, ch. 949, § 1,

66 Stat. 790, and amended Aug. 30, 1954, ch. 1076, § 1(20), 68 Stat. 967.)

#### AMENDMENTS

1954—Act Aug. 30, 1954, amended section by repealing the requirement that the Federal authorities concerned should also report to Congress all transfers and agreements authorized by this section.

#### TRANSFER OF FUNCTIONS

Transfer of functions to National Park Service and to Administrator of General Services, see notes under section 8-108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission", on authority of act July 19, 1952, which transferred functions of the latter to the former.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.





## TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

### Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

§ 9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1973, last day for advancement of loans.

\* \* \* \* \*

(b) To assist in financing the cost of constructing facilities required for activities financed by the general fund of the District, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided*, That the total principal amount of loans advanced pursuant to this section shall not exceed \$175,000,000: *Provided further*, That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budgets submitted for the District, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further*, That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952. Such loans shall be in

addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in the Treasury of the United States to the credit of the general fund of the District.

\* \* \* \* \*

(f) No loans shall be advanced pursuant to this section after June 30, 1973. (June 6, 1958, 72 Stat. 183, Pub. L. 85-451, § 1; Aug. 27, 1963, 77 Stat. 130, Pub. L. 88-104, § 2(a) (b).)

#### AMENDMENTS

1963—Section 2(a) of act Aug. 27, 1963, amended subsection (b) by striking out "\$75,000,000" and inserting in lieu thereof "\$175,000,000." Section 2(b) amended subsection (f) by striking out "June 30, 1963" and inserting in lieu thereof "June 30, 1973."

### Chapter 5.—REPAIRS AND IMPROVEMENTS

§ 9-501. Repairs and improvements—Working fund.

#### SIMILAR PROVISIONS

1963—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-352, § 15.  
1962—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.

#### CONTINUATION OF ACT APR. 8, 1960

Section 15 of act Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, provided that: "limitations and legislative provisions contained in the District of Columbia Appropriations Act, 1961, shall be continued for the fiscal year 1962:"





## PART II

# JUDICIARY AND JUDICIAL PROCEDURE

*Part II consisting of Titles 11 to 17 inclusive was enacted into law by Pub. L. 88-241, § 1, Dec. 23, 1963, 77 Stat 478, effective Jan. 1, 1964*

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.	TITLE 15. JUDGMENTS AND EXECUTIONS—FEES AND COSTS.
TITLE 12. RIGHT TO REMEDY.	TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 13. PROCEDURE GENERALLY.	TITLE 17. REVIEW.
TITLE 14. PROOF.	

TABLE SHOWING DISPOSITION OF SECTIONS OF FORMER TITLES 11 TO 17 INCLUSIVE

		<i>Part II</i> <i>Former Sections</i>	<i>Part II</i> <i>New Sections</i>	<i>Part II</i> <i>Former Sections</i>	<i>Part II</i> <i>New Sections</i>
11-101	11-101.			11-706	Repealed.
11-204	11-301.			11-707	Repealed.
11-206	11-302, 11-341.			11-708	Repealed.
11-207	11-341.			11-709	Repealed.
11-211	Repealed.			11-710	11-984.
11-301	16-1302.			11-710a	11-984.
11-303	Omitted.			11-710b	11-985.
11-305	11-521.			11-710c	11-984.
11-306	11-521.			11-711	11-932.
11-306a	Omitted.			11-712	11-983.
11-308	11-521.			11-713	11-931.
11-312	11-501.			11-714	11-931.
11-319	13-701.			11-715	13-702.
11-321	Omitted.			11-715a	16-702, 16-705, 16-706.
11-326	15-320.			11-716	11-2301, 11-2306, 11-2309 to 11-2313.
11-327	15-321.			11-716a	11-2301, 11-2306, 11-2311 to 11-2313, 16-705.
11-328	15-322.			11-716b	11-2309, 11-2310, 11-2312, 11-2314.
11-329	Repealed.			11-717	Repealed. See 13-101.
11-332	11-503.			11-718	15-131, 15-132.
11-401	11-502.			11-719	15-711.
11-501	11-522.			11-720	15-712.
11-502	Repealed.			11-721	11-2314.
11-503	11-522.			11-722	15-709.
11-504	11-522, 16-3102.			11-722a	15-713.
11-505	11-541.			11-724	15-131.
11-506	16-3103.			11-724a	16-709.
11-507	Repealed.			11-725	16-3731 to 16-3733.
11-508	16-3104.			11-726	16-3734.
11-509	16-3105.			11-727	16-3735, 16-3736.
11-510	16-3106.			11-728	Repealed. See 13-101.
11-511	Repealed.			11-729	16-3737.
11-512	16-3107.			11-730	16-3738.
11-513	16-3108.			11-731	16-3739.
11-514	16-3109.			11-732	16-3740.
11-515	16-3110.			11-733	16-533.
11-516	Repealed.			11-734	Repealed.
11-517	Repealed.			11-735	16-1501.
11-518	16-3113.			11-736	16-1502.
11-519	16-3111.			11-737	16-1503.
11-520	16-3112.			11-738	16-1504.
11-601	Repealed.			11-739	16-1505.
11-609	Repealed.			11-740	Repealed. See 11-982.
11-610	Repealed.			11-741	14-104.
11-619	Repealed.			11-742	15-133.
11-620	Repealed.			11-743	15-132.
11-621	Repealed.			11-744	15-521.
11-623	Repealed.			11-745	15-522.
11-624	Repealed.			11-746	15-523.
11-701	Repealed.			11-747	15-524.
11-702	Repealed.			11-748	13-302, 15-709.
11-703	11-961.			11-748a	16-701, 16-703, 16-704, 16-706, 16-707, 16-708.
11-704	11-961.				
11-705	11-981.				



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11-748b-----	16-703.	11-773-----	11-321, 17-101, 17-102, 17-103, 17-104.
11-748c-----	16-703.	11-774-----	11-761, 13-101, 13-302.
11-748d-----	16-703.	11-775-----	11-2104, 11-2105.
11-748e-----	15-710.	11-776-----	11-1701.
11-749-----	15-713.	11-777-----	Repealed.
11-751-----	11-901.	11-801-----	11-1301.
11-751a-----	11-101, 11-341, 11-703, 11-901, 11-902 to 11-908, 11-931 to 11-934, 11-961, 11-963, 11- 981, 11-983, 11-984, 11-985, 11-1101, 11-1102, 11-1121, 11- 1122, 11-1141, 11-1161, 11- 1301 to 11-1303, 11-1321 to 11-1323, 11-1341 to 11-1343, 11-1503, 11-1586, 11-1701, 11- 2306, 11-2311 to 11-2314, 13- 101, 13-301, 13-302, 13-702, 14-104, 15-101, 15-102, 15-131 to 15-133, 15-310, 15-318, 15- 521, 15-522, 15-709 to 15-712, 15-714, 16-301, 16-501, 16-533, 16-578, 16-581, 16-701 to 16- 707, 16-709, 16-710, 16-1501, 16-1505, 16-731, 16-3901, 16-3902, 16-3905, 16-3907, 16-3910.	11-802-----	11-1321.
11-752-----	11-901, 11-902.	11-803-----	11-1302.
11-753-----	11-902.	11-804-----	11-1341, 11-1342.
11-754-----	11-903, 11-904, 11-905, 11-906, 11-907, 11-908, 11-931, 11- 932, 11-933, 11-934.	11-805-----	16-3902.
11-754a-----	11-983.	11-806-----	11-1322.
11-754b-----	11-935.	11-807-----	16-3903, 16-3909.
11-755-----	11-901, 11-961, 11-963, 11-983, 11-1101, 11-1301, 11-1302, 11-1303, 11-1321 to 11-1323, 11-1341 to 11-1343, 11-2301, 11-2306, 11-2309, 11-2310, 11-2311, 11-2312, 11-2313, 11- 2314, 13-101, 13-301, 13-302, 13-702, 14-104, 15-132, 15- 709, 15-711, 16-701, 16-702, 16-703, 16-704, 16-705, 16- 706, 16-707, 16-709, 16-3731.	11-808-----	16-3906.
11-755a-----	11-963.	11-809-----	16-3904.
11-755b-----	15-715.	11-810-----	11-1343.
11-755 note-----	Repealed.	11-811-----	16-3907.
11-755c-----	11-521(a) (2), 11-963.	11-812-----	16-3908.
11-755d-----	11-521(a) (2), 11-963.	11-813-----	11-1323.
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11-758-----	11-1101.	11-816-----	11-1303.
11-759-----	Repealed. See 11-1101.	11-817-----	Repealed. See 11-741, 17-301 et seq.
11-760-----	11-1102.	11-818-----	16-3905.
11-761-----	11-1121.	11-819-----	16-3910.
11-762-----	11-1141.	11-820-----	Repealed.
11-763-----	11-1161, 15-132.	11-901-----	11-1501.
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11-765-----	13-301, 13-302.	11-903-----	16-2316.
11-766-----	13-101, 15-710.	11-904-----	11-1501, 11-1582.
11-767-----	11-741, 17-302, 17-305, 17-306, 17-307.	11-905-----	11-1504.
11-768-----	11-1103.	11-906-----	11-1551, 11-1553, 11-1554, 11- 1583, 16-2301.
11-769-----	11-1141.	11-907-----	11-523, 11-1554, 11-1556, 11- 1557.
11-770-----	Repealed.	11-908-----	16-2302.
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		11-938-----	16-2315.
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		11-941-----	Repealed.
		11-942-----	Repealed.
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		11-942a-----	16-2383.
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11-964	-----	16-2354.		13-103	-----	13-334.	
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11-966	-----	16-2356.		13-105	-----	13-332.	
11-967	-----	Repealed.		13-106	-----	13-332.	
11-1002	-----	Repealed.		13-107	-----	13-333.	
11-1104	-----	Omitted. See 40 U.S.C. 19.		13-108	-----	13-336, 13-337.	
11-1201	-----	Repealed. See 11-1901.		13-109	-----	13-338.	
11-1202	-----	Repealed. See 1-213, 1-213b.		13-110	-----	13-339.	
11-1203	-----	11-1902, 11-1905.		13-111	-----	13-340.	
11-1204	-----	11-1902.		13-112	-----	13-340.	
11-1205	-----	11-1903, 11-1904.		13-113	-----	13-341.	
11-1206	-----	11-1902.		13-201	-----	Omitted.	
11-1207	-----	Repealed.		13-202	-----	Omitted.	
11-1208	-----	Repealed.		13-203	-----	Omitted.	
11-1301	-----	11-2101.		13-204	-----	Repealed.	
11-1302	-----	11-2102.		13-205	-----	15-106.	
11-1303	-----	11-2103.		13-206	-----	Omitted.	
11-1304	-----	11-2105.		13-207	-----	Omitted.	
11-1401	-----	11-2303, 11-2304.		13-208	-----	Repealed.	See 13-101.
11-1402	-----	11-2305.		13-209	-----	Repealed.	
11-1403	-----	11-2305.		13-210	-----	Omitted.	
11-1404	-----	11-2304.		13-211	-----	Repealed.	See 13-101.
11-1405	-----	11-2312.		13-212	-----	Omitted.	
11-1406	-----	Repealed.		13-213	-----	Repealed.	
11-1407	-----	11-2306.		13-214	-----	Repealed.	
11-1408	-----	11-2307.		13-215	-----	Repealed.	
11-1409	-----	11-2308.		13-216	-----	Repealed.	
11-1410	-----	11-2304, 11-2306.		13-217	-----	Repealed.	
11-1411	-----	11-2309.		13-218	-----	Omitted.	
11-1412	-----	Repealed. See 28 U.S.C. 1866.		13-219	-----	Omitted.	
11-1413	-----	Repealed.		13-220	-----	Omitted.	
11-1416	-----	11-2301.		13-221	-----	Repealed.	
11-1417	-----	11-2301, 11-2303.		13-222	-----	Repealed.	
11-1418	-----	11-2302.		13-301	-----	Repealed.	
11-1420	-----	Omitted. See 5 U.S.C. 30n.		13-302	-----	Repealed.	
11-1421	-----	Omitted. See 5 U.S.C. 30o.		13-303	-----	Repealed.	
11-1422	-----	Omitted. See 5 U.S.C. 30p.		13-304	-----	Omitted.	
11-1423	-----	15-701.		13-305	-----	Omitted.	
11-1501	-----	15-702.		13-306	-----	Omitted.	
11-1502	-----	15-707.		13-307	-----	Omitted.	
11-1503	-----	Omitted.		13-308	-----	Omitted.	
11-1504	-----	15-708.		13-309	-----	Omitted.	
11-1505	-----	15-703.		13-310	-----	Omitted.	
11-1506	-----	15-704, 15-705.		13-311	-----	Omitted.	
11-1507	-----	Omitted.		13-312	-----	Omitted.	
11-1508	-----	15-706.		13-313	-----	Omitted.	
11-1509	-----	11-1906.		13-314	-----	Omitted.	
11-1515	-----	15-702.		13-315	-----	Omitted.	
11-1516	-----	Omitted. See 28 U.S.C. 1920.		13-316	-----	Omitted.	
11-1517	-----	Omitted. See 28 U.S.C. 1920.		13-317	-----	Omitted.	
11-1518	-----	15-705.		13-318	-----	Omitted.	
11-1519	-----	15-714.		13-319	-----	Omitted.	
11-1520a	-----	15-716.		13-320	-----	Omitted.	
11-1521	-----	12-101.		13-401	-----	Repealed.	
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12-103	-----	12-102.		14-103	-----	Repealed.	
12-104	-----	12-102.		14-104	-----	14-102.	
12-105	-----	12-102.		14-201 to 14-203	-----	Repealed.	
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12-107	-----	12-102.		14-301	-----	14-301.	
12-108	-----	12-102.		14-302	-----	14-302.	
12-109	-----	12-102.		14-303	-----	14-303.	
12-110	-----	12-102.		14-304	-----	14-304.	
12-111	-----	12-104.		14-305	-----	14-305.	
12-112	-----	15-319.		14-306	-----	14-306.	
12-113	-----	12-102.		14-307	-----	14-306.	
12-114	-----	12-102.		14-308	-----	14-307.	
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12-116	-----	12-102.		14-310	-----	14-309.	
				14-401	-----	14-501.	



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15-108-----	15-104.	16-317-----	16-522.
15-109-----	15-105.	16-318-----	16-523.
15-110-----	Repealed.	16-319-----	16-524.
15-111-----	15-106.	16-320-----	16-524.
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15-208-----	15-309.	16-328-----	16-529.
15-209-----	15-310.	16-329-----	16-529.
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15-403-----	15-503.	16-504-----	Repealed. See 13-101.
16-101-----	16-101.	16-505-----	16-1104.
16-102 to 16-106-----	Repealed.	16-506-----	16-1105.
16-208-----	Repealed.	16-507-----	16-1106.
16-209-----	Repealed.	16-508-----	16-1107.
16-210-----	16-301.	16-509-----	16-1108.
16-211-----	16-302.	16-510-----	16-1101.
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16-532	-----	16-1124.		16-1304	-----	16-2923.	
16-533	-----	16-1124.		16-1305	-----	16-2924.	
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16-601	-----	16-1301, 16-1311.		16-1401, 16-1402	-----	Repealed.	
16-602	-----	Repealed.		16-1501	-----	16-3301.	
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16-621	-----	Repealed.		16-1807	-----	16-3707.	
16-622	-----	Repealed.		16-1808	-----	Repealed. See 13-101.	
16-623	-----	Repealed.		16-1809	-----	16-3708.	
16-624	-----	Repealed.		16-1810	-----	16-3709.	
16-625	-----	Repealed.		16-1811	-----	16-3710.	
16-626	-----	Repealed.		16-1812	-----	16-3711.	
16-627	-----	Repealed.		16-1813	-----	16-3712.	
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16-630	-----	16-1358.		16-1902	-----	Repealed.	
16-631	-----	16-1359.		16-1903	-----	13-501.	
16-632	-----	16-1360.		16-1904	-----	13-502.	
16-633	-----	16-1361.		16-1905	-----	Repealed.	
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16-635	-----	Repealed.		16-1907	-----	13-504.	
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16-644	-----	Repealed.		19-404a	-----	11-505.	
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16-704	-----	16-1704.		19-409	-----	11-504.	
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16-707	-----	Omitted. See 16-1701-4.		19-411	-----	11-505.	
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16-807	-----	16-1907.					
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16-902	-----	16-2102.					
16-903	-----	16-2103.					
16-904	-----	16-2104.					
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16-1001 to 16-1010	-----	Repealed.					
16-1101	-----	16-2501.					
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## TRANSFERRED SECTIONS

*Showing sections of Part II, D.C. Code, 1961 ed., which are transferred to other parts of that Code, or to the United States Code*

Section:	Transferred to:
11-102	Title 2 U.S.C. § 137c.
11-103 to 11-105	Title 40 U.S.C. ch. 1.
11-330	D.C. Code, Title 47, ch. 1, § 1262.
11-1601 to 11-1624	D.C. Code, Title 30, ch. 3.
12-301 to 12-306	D.C. Code, Title 28, ch. 30.
12-401 to 12-403	D.C. Code, Title 28, ch. 31.
16-705	D.C. Code, Title 22, ch. 5, § 508.





## TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

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3. United States Court of Appeals for the District of Columbia Circuit.....	11-301
5. United States District Court for the District of Columbia.....	11-501
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### ENACTING CLAUSE

Section 1 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 478, provided in part: "That the general and permanent laws relating to the judiciary and judicial procedure of the District of Columbia are revised, codified, and enacted as Part II of the District of Columbia Code, 'Judiciary and Judicial Procedure', and may be cited 'D.C. Code §—', as follows:"

### EFFECTIVE DATE

Section 20 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 620, provided: "This Act shall take effect on January 1, 1964."

### SAVINGS AND SEVERABILITY PROVISIONS

Section 14 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 618, provided: "If any part of Part II of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], is held invalid, the remainder of Part II shall not be affected thereby."

### LEGISLATIVE CONSTRUCTION

Section 15 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 618, provided: "An inference of a legislative construction may not be drawn by reason of the subchapter, chapter, or title in Part II of the District of Columbia Code, as set out in section 1 of this Act, in which any section is placed, or by reason of the catchlines used."

### PROVISIONS RELATING TO COURTS, JUDGES AND EMPLOYEES—

#### CONTINUATION OF EXISTING LAW

Section 17 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 618, provided in part: "(a) Part II of the District of Columbia Code, set out in section 1 of this Act [Titles 11 to 17], with respect to the organization of each of the several courts and their divisions and branches therein provided for, is a continuation of existing law, and the tenure of the judges, officers, and employees thereof, in office on January 1, 1964, is not affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of Part II, as set out in section 1 of this Act [Titles 11 to 17], pursuant to his prior appointment. Loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of those courts on the effective date this Act shall not result from its enactment."

### APPROPRIATIONS

Section 18 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 619, provided: "There are authorized to be appropriated

such sums as may be necessary to carry out the provisions of Part II, District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17]."

### TABLE OF BRITISH STATUTES OMITTED

Section 19 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 619, provided that the following British statutes have no further force and effect in the District of Columbia:

- (1) 9 Henry III (1225), chapter 8, sections 1, 2, 3, 4 (D.C. Code, 1961 ed., secs. 15-213, 16-2003 to 16-2005);
- (2) 13 Edward I (1285), chapter 31 (D.C. Code, 1961 ed., sec. 11-321);
- (3) 14 Edward III (1340), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13-304);
- (4) 36 Edward III (1362), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13-201);
- (5) 17 Richard II (1393), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13-219);
- (6) 11 Henry IV (1409), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13-307);
- (7) 9 Henry V (1421), chapter 4, section 1 (D.C. Code, 1961 ed., sec. 13-305);
- (8) 4 Henry VI (1425), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13-306);
- (9) 8 Henry VI (1429), chapter 12, sections 2, 4 (D.C. Code, 1961 ed., secs. 13-308 to 13-310);
- (10) 8 Henry VI (1429), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13-311);
- (11) 4 Henry VII (1487), chapter 20 (D.C. Code, 1961 ed., sec. 13-220);
- (12) 23 Henry VIII (1531), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 11-1517);
- (13) 18 Elizabeth (1576), chapter 14, sections 1, 2 (D.C. Code, 1961 ed., sec. 13-314);
- (14) 27 Elizabeth (1585), chapter 5, sections 1, 2 (D.C. Code, 1961 ed., secs. 13-206, 13-207);
- (15) 4 James I (1606), chapter 3, section 2 (D.C. Code, 1961 ed., sec. 11-1517);
- (16) 21 James I (1623), chapter 13, sections 2, 3 (D.C. Code, 1961 ed., sec. 13-315);
- (17) 16 Charles II (1664), chapter 7, sections 2, 3 (D.C. Code, 1961 ed., secs. 16-706, 16-707);
- (18) 16 and 17 Charles II (1664), chapter 8, sections 1, 2, 5 (D.C. Code, 1961 ed., secs. 13-316, 13-317);
- (19) 29 Charles II (1676), chapter 3, sections 14, 15, 16 (D.C. Code, 1961 ed., secs. 15-104, 15-207);
- (20) 29 Charles II (1676), chapter 7, section 6 (D.C. Code, 1961 ed., sec. 13-102);
- (21) 8 and 9 William and Mary (1697), chapter 11, sections 1, 8 (D.C. Code, 1961 ed., secs. 11-1518, 13-205, 15-111);
- (22) 4 Anne (1705), chapter 16, sections 1, 2, 4, 7, 11, 12, 27 (D.C. Code, 1961 ed., secs. 13-206, 13-210, 13-212, 13-218, 13-318, 13-319, 16-101);
- (23) 6 Anne (1707), chapter 18, sections 1, 2, 3, 4, 5 (D.C. Code, 1961 ed., secs. 16-527 to 16-531);
- (24) 9 Anne (1710) chapter 14, sections 1, 2, 4, 5, 8 (D.C. Code, 1961 ed., secs. 16-701 to 16-705);
- (25) 9 Anne (1710), chapter 20, section 7 (D.C. Code, 1961 ed., sec. 13-320);
- (26) 5 George I (1718), chapter 13, section 1 (D.C. Code, 1961 ed., sec. 13-312);
- (27) 4 George II (1731), chapter 26, section 1 (D.C. Code, 1961 ed., sec. 13-202);
- (28) 4 George II (1731), chapter 28, sections 2, 3, 4 (D.C. Code, 1961 ed., secs. 16-532 to 16-534);
- (29) 6 George II (1733), chapter 14, section 5 (D.C. Code, 1961 ed., sec. 13-203); and
- (30) 11 George II (1738), chapter 19, section 12 (D.C. Code, 1961 ed., sec. 16-502).



## REPEALS AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 21 of act Dec. 23, 1963, Pub. L. 88-241, 77 Stat. 620, provided: "(a) The sections of the Revised Statutes of the District of Columbia, and Acts or parts of Acts, enumerated in the schedule below, are hereby repealed. Any rights or liabilities existing under the statutes or parts thereof so repealed, and any cases, actions or proceedings instituted under, or growing out of, any of the statutes or parts thereof so repealed, are not affected by the repeal. However, laws becoming effective after August 10, 1963, and inconsistent with this Act, shall supersede it to the extent of the inconsistency.

"(b) If any section of the Revised Statutes of the District of Columbia, or act, or part of an act, listed in the schedule below, has been repealed heretofore, the fact of its being listed in the schedule below shall not be construed as a revival thereof or as a recognition or acknowledgment that the section, act, or part of an act was in force at the time of the specific repeal effected by this section." [The "schedule below" referred to in text is set out as a part of Pub. L. 88-241.]

## Chapter 1.—GENERAL PROVISIONS

Sec.

11-101. Judicial power.

## § 11-101. Judicial power.

The judicial power in the District of Columbia is vested in:

(1) inferior courts, namely,

The District of Columbia Court of General Sessions;

The Juvenile Court of the District of Columbia; and

(2) superior courts, namely,

The District of Columbia Court of Appeals;

The United States District Court for the District of Columbia;

The United States Court of Appeals for the District of Columbia Circuit; and

The Supreme Court of the United States.

(Dec. 23, 1963, 77 Stat. 478, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-101, 11-751a, 11-771a (Mar. 3, 1901, ch. 854, § 2, 31 Stat. 1190; Mar. 19, 1906, ch. 960, 34 Stat. 73; Feb. 17, 1909 ch. 134, 35 Stat. 623; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 6, 56 Stat. 190, 194; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates section 11-101 of D.C. Code, 1961 ed., with section 11-751a thereof which changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and with section 11-771a thereof which changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals. The latter two sections are also shown as consolidated with a number of other sections carried in this revised part, to indicate the basis for substituting these new court designations.

Word "Circuit" is added to the name of the United States Court of Appeals for the District of Columbia, to conform with Title 28 U.S.C. §§ 41, 43, and Rule 1 of the General Rules of the Court.

Changes are made in phraseology and arrangement.

## Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

## SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.

11-301. Deputy clerks signing for clerk—authentication.

11-302. Reporter—General duties.

## SUBCHAPTER II.—JURISDICTION

Sec.

11-321. Appellate jurisdiction.

## SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11-341. Distribution of reports—Sale.

## SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

## § 11-301. Deputy clerks signing for clerk—Authentication.

The deputy clerks for the United States Court of Appeals for the District of Columbia Circuit may sign the name of the clerk of the court to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate his signature by affixing the seal of the court thereto when the impress of the seal is necessary to its authentication. In such a case the signature shall be—

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 479, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-204 (Feb. 9, 1963, ch. 74, § 4, 27 Stat. 435; July 30, 1894, ch. 172, § 1, 28 Stat. 160; Mar. 3, 1901, ch. 854, § 224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 21, 1928, ch. 659, 45 Stat. 645; June 25, 1948, ch. 646, § 15, 62 Stat. 988; May 24, 1949, ch. 139, § 137, 63 Stat. 108).

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11-101.

Minor changes are made in phraseology.

## CROSS REFERENCE

Appointment of clerks, criers, bailiffs and messengers, see U.S. Code, Title 28, §§ 711—713.

## § 11-302. Reporter—General duties.

The United States Court of Appeals for the District of Columbia Circuit may appoint a reporter, who shall serve during the pleasure of the court, and who shall report, edit, and publish the court's opinions, in a form prescribed by it. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-206 (Feb. 9, 1963, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat. 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 24, 1949, ch. 139, § 138, 63 Stat. 109).

Section is taken, with minor changes in phraseology, from first paragraph of section 11-206 of D.C. Code, 1961 ed. Remainder of section 11-206 is carried into section 11-341 herein.

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11-101.

Other provisions relating to officers and employees of the United States courts of appeals, of the judges thereof, and of federal courts generally, are set out in Title 28 U.S.C. §§ 711 et seq., 951 et seq.

## SUBCHAPTER II.—JURISDICTION

## § 11-321. Appellate jurisdiction.

(a) In addition to its jurisdiction otherwise conferred by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals, including judgments of that court



rendered on review of orders and decisions of the administrative agencies of the District of Columbia specified by section 11-742(a).

(b) A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772, 11-773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Subsec. (a) is new in form, but does not make any new law, considering the provisions carried into subsec. (b). The latter provisions represent a consolidation of the last sentence of subsec. (f) of section 11-772 of D.C. Code, 1961 ed., which authorized aggrieved parties to seek reviews in the United States Court of Appeals, in the manner provided by section 11-773 thereof, of judgments in the Municipal Court of Appeals (now, District of Columbia Court of Appeals) on appeals from certain administrative orders and decisions; and the first sentence of section 11-773, which contained the general provision authorizing aggrieved parties to seek reviews in the United States Court of Appeals. The single, consolidated provision, as set out in subsec. (b) of this section, is couched in general terms and applies to all judgments of the District of Columbia Court of Appeals, whether entered in connection with an appeal from an order of decision of an administrative agency or otherwise. Actually, it follows the language of the first sentence of section 11-733 of D.C. Code, 1961 ed.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of sections 11-772 and 11-773 of D.C. Code, 1961 ed., see tables.

### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

#### § 11-341. Distribution of reports—Sale.

(a) The reporter of the United States Court of Appeals for the District of Columbia Circuit shall furnish and deliver one copy of each volume of the reports of the opinions of the court, immediately after publication, to each judge of the following courts in the District:

- (1) The United States Court of Appeals;
- (2) The United States District Court;
- (3) The District of Columbia Court of Appeals;
- (4) The Court of General Sessions;
- (5) The Juvenile Court; and
- (6) The Tax Court of the United States.

and the copies so received by each judge shall, upon his death, resignation, retirement, or removal from office, be delivered to his successor.

(b) The court shall approve the sale price for the reports of its opinions at not more than \$6.50 per volume. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-206, 11-207, 11-751a (Feb. 9, 1893, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat. 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Feb. 25, 1929, ch. 314, 45 Stat. 1287; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804,

49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, §§ 127, 138, 63 Stat. 107, 109; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates second paragraph of section 11-206 with section 11-207 of D.C. Code, 1961 ed., and with section 11-751a thereof which changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. Section 11-751a is also shown as consolidated with a number of other sections carried into this revised part, to indicate the basis for substituting the new court designation.

In subsec. (a), references to the District of Columbia Court of Appeals, the Juvenile Court, and the Tax Court of the United States are inserted for completeness.

Also in subsec. (a), "retirement," is inserted after "resignation," to render more complete the provisions relating to delivery of the volumes to successors.

The provisions of section 11-207 of D.C. Code, 1961 ed., were derived from a provision of the District of Columbia Appropriation Act for 1930 (act Feb. 25, 1929, ch. 314, cited above), relating to the price, per volume, of the court's reports, and were repeated in the District of Columbia Appropriation Act for 1933 (ch. 308, 47 Stat. 368), and other District of Columbia appropriation acts down to and including act Aug. 9, 1939, ch. 633, § 1, 53 Stat. 1309. The same provision, commencing with 1940, appears in the Judiciary Appropriation Acts rather than in the District of Columbia Appropriation Acts. See, for example, act May 14, 1940, ch. 189, title IV, 54 Stat. 207 (210), and subsequent Judiciary Appropriation Acts down to and including act Oct. 18, 1962, Pub. L. 87-843, title IV, § 403, 76 Stat. 1100. In view of the repetition of the provision in annual appropriation acts for such a long period of time, this section (subsec. (b)) makes the provision permanent.

Changes are made in phraseology and arrangement.

Remainder of section 206 of D.C. Code, 1961 ed., is carried into section 11-302 herein.

## Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

### SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.

- 11-501. Appointment of auditor, messengers, and other officers.
- 11-502. Duties of deputy clerks.
- 11-503. Secretarial and clerical assistants for United States Commissioners—Expenses.
- 11-504. Register of Wills—Oath—Bond—Clerk of Probate Court.
- 11-505. Powers and duties of Register of Wills—Restrictions—Penalties.
- 11-506. Deputies and other employees under Register of Wills—Duties.

### SUBCHAPTER II.—JURISDICTION

- 11-521. Civil and criminal jurisdiction.
- 11-522. Probate and guardianship jurisdiction.
- 11-523. Concurrent jurisdiction of desertion and non-support cases.

### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

- 11-541. Seal of Probate Court.

### SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

- § 11-501. Appointment of auditor, messengers, and other officers.

The United States District Court for the District of Columbia may appoint an auditor for the court, a messenger for each judge, and all officers of the court necessary for the due administration of justice. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-312 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 65, 31 Stat. 1200; June 30, 1902, ch. 1329, 32 Stat. 522; Apr. 19, 1920, ch. 153, 41 Stat. 455; Apr. 3, 1926, ch. 103, 44 Stat. 234; June 25, 1936, ch. 804, 49 Stat. 1921; May 24, 1949, ch. 139, § 136, 63 Stat. 108).

Changes are made in phraseology.

## CROSS REFERENCE

Appointments of clerks, law clerks, etc., see U.S. Code, Title 28, § 751 et seq.

## § 11-502. Duties of deputy clerks.

The clerk of the United States District Court for the District of Columbia may designate deputy clerks to perform his duties in his name, who may sign his name to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate the signature by affixing the seal of the court thereto when the seal is necessary to its authentication. In such a case the signature shall be—

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 480, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-401 (Mar. 3, 1963, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 174, 31 Stat. 1218; June 30, 1902, ch. 1329, 32 Stat. 527; Dec. 15, 1941, ch. 574, § 1, 55 Stat. 801; June 25, 1948, ch. 646, § 14, 62 Stat. 988).

The first sentence of section 11-401 of D.C. Code, 1961 ed., provided as follows: "The clerk of the United States District Court for the District of Columbia may assign any of the deputy clerks in his office to duty in the general or special terms of the court, except the probate term". This sentence is omitted, and in its place and in place of the words at the beginning of the second sentence: "Any of the duties of the clerk may be performed in his name by any of the deputy clerks". The words "The clerk of the United States District of Columbia may designate deputy clerks to perform his duties in his name" are inserted at the beginning of the second sentence. Under prior law, the District Court had a general term for the transaction of business (but not for the hearing of causes), and special terms for the hearing of causes, which were designated, respectively, as the circuit court, equity court, criminal court, probate court, and district court. These statutory distinctions were repealed subsequent to the enactment, in 1948, of Title 28, United States Code, under which the District of Columbia was made a judicial district (28 U.S.C. § 88). Most of the provisions in that title relating to district courts embrace the United States District Court for the District of Columbia (28 U.S.C. §§ 132, 451). Sections 137-141 thereof govern the division of business and terms of district courts. Under section 138, each court, by rule, fixes the times for holding its regular terms, and section 141 provides in part that special terms, pursuant to court rules approved by the judicial council of the circuit, may be held upon such notice as the court orders, and that any business may be transacted at a special term which might be transacted at a regular term.

The Register of Wills serves as clerk of the court in matters relating to probate, the administration of estates, and guardianship, hence it is not necessary to retain the exception in the above-quoted sentence, or a similar one, with respect to probate, as the section, as revised, is still restricted to assignment only of duties of the regular clerk, and he apparently has no duties in the matters referred to.

Changes are made in phraseology.

For additional powers and duties of district court clerks and deputies, see Title 28, U.S.C., §§ 751, 956.

## CROSS REFERENCE

Appointment of deputy clerks, clerical assistants, etc., see U.S. Code, Title 28, § 751.

## § 11-503. Secretarial and clerical assistants for United States Commissioners—Expenses.

Each United States commissioner for the District may employ secretarial and clerical assistants in such number and incur such other expenses as the District Court considers necessary. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-332 (June 29, 1953, ch. 159, § 403, 67 Stat. 102).

## § 11-504. Register of Wills—Oath—Bond—Clerk of Probate Court.

(a) The United States District Court for the District of Columbia shall appoint, and may remove, a Register of Wills, who shall take an oath for the faithful and impartial discharge of the duties of his office. The office of the Register of Wills is a part of the District Court, and chapter 41 of Title 28, United States Code, applies thereto.

(b) The Register of Wills shall give bond, with two or more sureties, to be approved by the chief judge of the court, in the sum of \$5,000:

(1) faithfully to discharge the duties of his office; and

(2) seasonably to record (A) the decrees and orders of the court in any of the matters over which the court exercises its jurisdiction or powers as the Probate Court, (B) all wills proved before him or the court, and (C) all other matters directed to be recorded in the court or in his office. The bond shall be entered in full upon the minutes of the court, and the original filed with the records thereof.

(c) The Register of Wills shall:

(1) act as clerk of the court in all matters over which the court exercises its jurisdiction or powers as the Probate Court;

(2) keep and certify the court's records in those matters; and

(3) generally, with respect to those matters, exercise the powers and perform the duties that might otherwise properly be exercised or performed by the regular clerk of the court.

(Dec. 23, 1963, 77 Stat. 481, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19-401, 19-402, 19-409 (R.S.D.C. §§ 929, 930; Mar. 3, 1901, ch. 854, §§ 116, 120, 31 Stat. 1208, 1209; Aug. 2, 1949, ch. 383, § 3, 63 Stat. 491, and Act Aug. 2, 1949, ch. 383, § 1, 4, 63 Stat. 491; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a) (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 19-401, 19-402, and 19-409 of D.C. Code, 1961 ed., with that part of section 1 of act of Aug. 2, 1949, ch. 383, 63 Stat. 491, which, for budgetary and administrative purposes, transferred the office of the Register of Wills from the government of the District of Columbia to the Administrative Office of the United States Courts (although in this revised section the transfer provisions are omitted, as executed), and made chapter 41 of Title 28, United States Code, applicable thereto, and section 4 of the 1949 act, that provided that the office of the Register of Wills should be a part of the District Court.

In subsec. (b) (2), words "of the court in any matters over which the Court exercises its jurisdiction or



powers as the Probate Court" are substituted for words in section 19-402 of the D.C. Code, 1961 ed., "of the judge of the District Court holding the special term for probate court business for the District"; and in subsec. (c) (1), words "act as clerk of the court in all matters over which the Court exercises its jurisdiction or powers as the Probate Court" are substituted for words in section 19-409 of the D.C. Code, 1961 ed., "act as clerk of the said probate term". See revision note under section 11-502 herein.

Changes are made in phraseology and arrangement.

#### § 11-505. Powers and duties of Register of Wills—Restrictions—Penalties.

##### (a) The Register of Wills may:

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval by the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before him, and approve or reject claims not exceeding \$300; and

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court.

(b) In matters over which the court has jurisdiction or exercises powers as the Probate Court, the Register of Wills shall:

(1) make full and fair entries of the proceedings of the court;

(2) make a fair record in a strong-bound book of all wills proved before him or the court, and of other matters required by law to be recorded in the court;

(3) lodge original papers filed with him in a place of safety appointed by the court;

(4) make out and issue every summons, process, and order of the court;

(5) make fair tables of his fees, and post them in a conspicuous place in his office for the inspection of persons having business therein;

(6) in every respect, act under the control and direction of the court; and

(7) pay into the treasury all fees, costs, and other moneys collected by him, except uncollected fees not required by law to be prepaid, and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by the Director.

##### (c) The Register of Wills may not:

(1) practice law in any court of the District or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward, for giving his advice in any matter relating to his office.

(d) The Register of Wills shall forfeit the sum of \$10 for each day that the tables referred to in clause (5) of subsection (b) of this section are missing through his neglect, which may be recovered as other debts for the same amount are recoverable. Of the amount so paid or recovered, one-half shall be for the use of the District, and one-half shall be for the use of the informer.

(e) If the Register of Wills or a person acting for him takes a greater fee than the fee provided for by law, he shall pay to the party injured \$50, which

may be recovered as other debts for the same amount are recoverable. (Dec. 23, 1963, 77 Stat. 481, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19-403, 19-404a, 19-406, 19-407, 19-408, 19-410, 19-411 (Maryland Act, 1779, ch. 25; Maryland Act 1781, ch. 16; Maryland Act 1786, ch. 10; Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248; R.S.D.C. §§ 933-935; Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889; Aug. 2, 1949, ch. 383, § 5, 63 Stat. 491).

Section consolidates part of section 19-403 of D.C. Code, 1961 ed., with sections 19-404a, 19-406, 19-407, 19-408, 19-410 and 19-411 thereof. For remainder of section 19-403, see section 11-506 herein.

Sections 19-410 and 19-411 of D.C. Code, 1961 ed., which were derived from the old Maryland statutes and the Act of Congress Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248, cited above, provided:

##### Section 19-410:

"No person, being register of wills shall plead as an attorney at law in any court in the District of Columbia for any person or persons, on any pretence whatsoever; and no register of wills as aforesaid shall exact, extort, demand, take, accept, or receive, from any person whatsoever, any fee or fees, gratuity, gift, or reward, for giving his advice in any matter or thing that will be transacted in the courts of the District of Columbia, under the penalty of \$80, current money for every such offense".

##### Section 19-411:

"The register of wills shall not demand, take, or receive, from any person whatever any fee, gratuity, gift or reward, for giving his advice in any matter or thing relative to his office, under the penalty of \$133.33, for every offense."

The restrictions imposed in the two sections quoted above are consolidated and preserved in subsec. (c) of this revised section but the penalties are omitted as inconsistent with each other, obsolete, or in any event unnecessary. The Register of Wills is now an officer of the District Court, and subject not only to its direction and control, but also to removal by the court, in its discretion, for misconduct or any other reason. See section 11-504 herein. See, also, section 401(2) of Title 18, United States Code, under which courts of the United States may punish such contempt of their authority as misbehavior of any of their officers in their official transactions.

Words "exact", "extort", "take", and "accept" are omitted from clause (2) of subsec. (c) of this section as covered by "demand" and "receive", as the case may be; and, in subsec. (e) reference to "forfeit" is omitted as covered by "pay".

Changes are made in phraseology.

#### § 11-506. Deputies and other employees under Register of Wills—Duties.

(a) The Register of Wills, with the approval of the court, may appoint necessary deputies, clerical assistants and other employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. With the approval of the court, the Register of Wills may remove any of the personnel so appointed.

(b) The personnel appointed pursuant to this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The deputies may perform acts necessary in the administration of the office of the Register of Wills and the certification of the records of the court which the Register may perform. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-403 (Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889).

Section is derived from that part of section 19-403 of D.C. Code, 1961 ed., which related to the appointment of deputies and other personnel in the office of the Register of Wills.

Section 19-403 of D.C. Code, 1961 ed., authorized the Register of Wills to appoint five deputies, and to appoint and fix the number of compensation of the employees of the "said probate court" (which was the designation of a former statutory special term of the District Court) and the office of the Register, and contained a proviso that "the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills". However, the Register of Wills is now an officer of the District Court, is appointed by that court, and the provisions of chapter 41 (section 601 et seq.) of Title 28, United States Code, apply to his office (see section 11-504 herein, and revision note thereunder). Chapter 41 of Title 28, United States Code, relates to the Administrative Office of the United States Courts, and section 601(a)(5) thereof provides that the Director of the Administrative Office shall fix the compensation of "clerks of court, deputies \* \* \* [etc.] and other employees of the courts whose compensation is not otherwise fixed by law". Further, under section 751 of Title 28, United States Code, the regular clerk of the District Court appoints, with the approval of the court, necessary deputies (with no statutory restriction on the number, presumably because of the necessity for the court's approval), clerical assistants, "and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts". Section 751 of that title also provides that the clerk may remove such deputies and other employees, with the approval of the court. That section, as stated, relates to the regular clerks of the district courts, and it does not apply to the Register of Wills, but, in view of the changed status of the office of the Register of Wills (since 1949), and the functions, under section 601 of Title 28, United States Code, of the Director of the Administrative Office, with respect to the office of the Register, it would seem that provisions similar to those of section 751 of Title 28, United States Code, relating to regular district court clerks, should apply to the Register and the deputies and other employees in his office. Therefore, the provisions of section 19-403 as herein revised, place no restriction on the number of deputies to be appointed, but make the appointments subject to approval of the court; omit the proviso prohibiting the appointment of other employees in a number in excess of the number actually necessary, and provide for approval of the number by the Director of the Administrative Office; omit the provisions which related to the fixing, by the Register, of the compensation of the employees; and provide, for the purpose of completeness, that the personnel appointed under this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The section also inserts the provision that, with the approval of the court, the Register may remove any of the personnel so appointed.

Changes are made in phraseology.

For remainder of section 19-403 of D.C. Code, 1961 ed., see section 11-505 herein.

## SUBCHAPTER II.—JURISDICTION

## § 11-521. Civil and criminal jurisdiction.

(a) Except in actions or proceedings over which exclusive jurisdiction is conferred by law upon other courts in the District, the United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court and to any other jurisdiction conferred by law, has all the jurisdiction possessed and exercised by it on January 1, 1964, and has original jurisdiction of all:

(1) civil actions between parties, where either or both of them are resident or found within the District; and

(2) offenses committed within the District.

(b) Except as otherwise specially provided, an action may not be brought in the District Court by original process against a person who is not resident or found within the District. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-305, 11-306, 11-308 (R.S.D.C. §§ 763, 767; Feb. 27, 1877, ch. 69, § 2, 19 Stat. 253; Mar. 3, 1901, ch. 854, § 61, 31 Stat. 1199; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 135, 63 Stat. 108).

Section consolidates sections 11-305, 11-306, and 11-308 of D.C. Code, 1961 ed.

In subsec. (a), words "September 1, 1963" are substituted for "August 31, 1948," to reflect the date on which this revised title will become effective.

The exception clause is inserted at the beginning of subsec. (a) for the purpose of clarity and completeness.

To conform more closely with modern usage, "original jurisdiction" is substituted for "cognizance"; and "offenses" is substituted for "crimes and offenses". See Title 28, U.S.C., §§ 1331, 1332; Title 18, U.S.C., §§ 1, 3231.

Also with respect to terms and phrases used in section 11-306 of D.C. Code, 1961 ed., in this section as revised, "civil actions" is substituted for "cases in law and equity", as the former term is all inclusive. The Federal Rules of Civil Procedure apply in the United States District Court for the District of Columbia (since it is a United States district court; see Rule 1 thereof, and Title 28, U.S.C., §§ 88, 132, 133), and Rule 2 thereof provides for only one form of action in such courts, to be known as a "civil action".

The following provisions of section 11-306 of D.C. Code, 1961 ed., are omitted as covered by provisions in Title 28, U.S.C. (see § 1331 et seq. thereof): "and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States".

Changes are made in phraseology.

## CROSS REFERENCES

Appeal from action of Board of Education in revoking license of institution of learning, see § 29-417.

Appointment of Board of Education, see § 31-101.

Appointment of jury commissioners, see § 11-2303.

Appointment of trustee for benefit of creditors, see § 28-2604.

Condemnation of land for minor streets and alleys, see § 7-313.

Condemnation of land for permanent highways, see § 7-202.

Designation of officer to take bonds and collateral, see § 23-610.

Determination of terms and conditions of joint use of certain railroad facilities, see § 7-1213.

Elections, petition for recount, see § 1-1111.

Enforcement of lien for cost of constructing Benning Bridge, see § 7-514.

Enforcement of lien for cost of constructing Michigan Avenue Viaduct, see § 7-520.

Enforcement of lien for cost of subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, see § 7-523.

Enforcement of lien to recover part of cost of construction of viaducts and subways, see § 7-1215.

Enjoining unlawful operation of medical and dental colleges, see § 31-904.

Jurisdiction over trust for burial grounds, see § 27-113.

Probation system, see § 24-101 et seq.

Proceedings to close public highways under Street Adjutant Act, see § 7-405.

Review of action of Nurses' Examining Board in refusing to register or reregister nurse, see § 2-407.



Revocation or suspension of dental licenses, see §§ 2-311, 2-312.

Revocation or suspension of license of dental hygienists, see § 2-325.

Revocation or suspension of license of podiatrist, see §§ 2-707, 2-708.

Revocation or suspension of nurse's registration, see § 2-407.

Revocation or suspension of physician's license, see § 2-123.

Violations of laws concerning Capitol building, grounds, and terraces, see § 9-112.

Jurisdiction of U.S. District Courts, see U.S. Code, Title 28, § 1331 et seq.

Venue of proceedings in U.S. District Courts, see U.S. Code, Title 28, § 1391 et seq.

#### JURISDICTION IN CERTAIN DOMESTIC RELATIONS MATTERS

Section 16 of act, Dec. 23, 1963, provided as follows: "Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any action, application, or proceeding, as described in section 11-1141 of the Code, filed in the District Court prior to the effective date of section 105 of the Act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

#### § 11-522. Probate and guardianship jurisdiction.

(a) The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870.

(b) In addition to the jurisdiction conferred by subsection (a) of this section, the District Court has full power and authority and plenary jurisdiction to:

(1) hear and determine questions relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and admit them to probate and record;

(2) take the proof of wills of either personal or real property and admit them to probate and record, and for cause revoke the probate thereof;

(3) grant, and, for any of the causes prescribed by law, revoke, letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and appoint successors to those persons whose letters are revoked;

(4) hear, examine, and decree upon accounts, claims, and demands existing between executors or administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(5) enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court; and

(6) enforce the distribution of estates by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards.

(c) Neither the execution nor the validity of a will or testament admitted to probate and record in the court may be impeached or examined collaterally. Subject to other provisions of this Part or other provisions of law, it is res judicata in all respects and to all persons.

(d) In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court.

(e) This section does not affect the jurisdiction conferred upon the Juvenile Court of the District of Columbia by section 11-1551(a)(3). (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-501, 11-503, 11-504 (Feb. 27, 1801, ch. 15, § 12, 2 Stat. 107; June 21, 1870, ch. 141, § 4, 16 Stat. 160; June 8, 1898, ch. 394, 30 Stat. 434; Mar. 3, 1901, ch. 854, §§ 116, 117, 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b); May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 11-501 and 11-503 of D.C. Code, 1961 ed., and that part of section 11-504 thereof that also related to the powers and jurisdiction of the District Court in probate matters.

The provision of section 11-501 of D.C. Code, 1961 ed., that the "special term" of the District Court, "known prior to March 3, 1901, as the orphans' court, shall be designated the probate court, and the judge holding said court shall have and exercise all the power and jurisdiction by law held and exercised by the orphans' court of Washington County, District of Columbia, prior to June 21, 1870", is omitted as obsolete, and is replaced by subsec. (a) of this section, which provides that "The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870", and by subsec. (d) of this section, which provides that "In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court". For a discussion of the former statutory provisions designating certain special terms of the District Court as the circuit court, equity court, criminal court, probate court, and district court, and the repeal and superseding thereof, see revision note under section 11-502 herein.

For the same reason as given the preceding paragraph, the first part of the proviso in section 11-504 of D.C. Code, 1961 ed., "That the jurisdiction of said probate court shall not be exclusive of the jurisdiction of the said equity court to entertain suits by legatees or next of kin against executors or administrators, or by wards against their guardians for an accounting" is also omitted as obsolete.

Subsec. (e) is new, and is inserted for the purpose of construction. The Juvenile Court, under section 11-1551 (a)(4) herein, has jurisdiction to determine the custody or guardianship of the persons of children under 18 years of age, in certain circumstances.

Changes are made in phraseology and arrangement.

For remainder of section 11-504 of D.C. Code, 1961 ed., see tables.

#### CROSS REFERENCES

Fees and costs, see § 15-701 et seq.

Probate code, see Titles 18-21.

Register of Wills as clerk of Probate Court, see § 11-504.

#### § 11-523. Concurrent jurisdiction of desertion and non-support cases.

The United States District Court for the District of Columbia has original jurisdiction, concurrently with the Juvenile Court of the District of Columbia, of all cases arising under sections 22-903 to 22-905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-907, 11-961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, §§ 1, 13, 64 Stat. 1240, 1242).



Section consolidates the second sentence of subsec. 2 of section 11-907, and the first part of subsec. (a) of section 11-961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the District Court, concurrently with the Juvenile Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11-1557 herein. For remainder of sections 11-907 and 11-961, see tables.

The reference to sections "22-903 to 22-905" is substituted for the reference in section 11-907 of D.C. Code, 1961 ed., to sections "22-902 to 22-905". This change from "22-902" to "22-903" conforms, not only with the provisions of section 11-961 of D.C. Code, 1961 ed., with which the provisions are herein consolidated, but, also, with the intent of Congress. See act July 2, 1940, ch. 525, 54 Stat. 735, which, in amending section 11-907, referred only to act Mar. 23, 1906 (ch. 1131, 34 Stat. 86; D.C. Code, 1961 ed., § 11-903 to 11-905). See, also, revision note under section 11-1556 herein. Section 11-902 is from act Mar. 3, 1901, ch. 847, § 4, 31 Stat. 1095.

The reference in section 11-961 of D.C. Code, 1961 ed., to section "22-906" is changed to "22-905" to conform, not only with the provisions of section 11-907 of D.C. Code, 1961 ed., consolidated herein, but, also, with act Jan. 11, 1951, ch. 1225, § 13, 64 Stat. 1242, from which section 11-961 was derived. That act refers only to the above-cited section 22-906, as amended (D.C. Code, 1961 ed., §§ 22-903 to 22-905). It does not make any reference to act May 18, 1910, ch. 248, 36 Stat. 403, from which section 22-906 of D.C. Code, 1961 ed., is derived.

Changes are made in phraseology.

### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

#### § 11-541. Seal of Probate Court.

The Probate Court shall keep a seal for the court, and for the office of the Register of Wills. The seal shall be affixed to all certificates of the Probate Court, or of the Register, and to every process and writ of every kind issued from it. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-505 (Act of Maryland 1798, ch. 101, subch. 15, § 12; Comp. Stat. D.C., 1894, ch. 35, § 50; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology.

### Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

#### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.

- 11-701. Continuation of court—Court of record—Seal.
- 11-702. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.
- 11-703. Absence, disability, or disqualification of judges—Vacancies—Quorum.
- 11-704. Clerks for judges—Compensation.

#### SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

- 11-721. Clerk—Compensation—Powers and duties.
- 11-722. Deputy clerks and other employees—Compensation—Duties.

#### SUBCHAPTER III.—JURISDICTION

- 11-741. Orders and judgments of Court of General Sessions and Juvenile Court.
- 11-742. Administrative orders and decisions.

#### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

- 11-761. Contempt powers.
- 11-762. Oaths, affirmations and acknowledgments.

### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

#### § 11-701. Continuation of court—Court of Record—Seal.

(a) The District of Columbia Court of Appeals shall continue as a court of record in the District.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the first paragraph and all of the second paragraph of section 11-771 of D.C. Code, 1961 ed.

Section 11-771a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-771a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions, as revised, continue the District of Columbia Court of Appeals which, as the Municipal Court of Appeals for the District of Columbia, had been created by section 11-771 of D.C. Code, 1961 ed.

Changes are made in phraseology and arrangement.

Most of the provisions of section 11-771 of D.C. Code, 1961 ed., are carried into this chapter. For complete distribution of that section in this revised part, see tables.

#### § 11-702. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.

(a) The District of Columbia Court of Appeals shall consist of a chief judge and two associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been actively engaged in the practice of law in the District of Columbia for a period of at least five years immediately prior to his appointment.

(c) Each judge shall be appointed or reappointed for a term of ten years, which terms shall be staggered as heretofore provided for; and he shall continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of \$19,000, and each associate judge shall receive an annual salary of \$18,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771; 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Aug. 24, 1962, Pub. L. 87-586, § 1(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the third paragraph, all of the fourth and fifth paragraphs, and part of the sixth paragraph of section 11-771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The words in the fourth paragraph of section 11-771 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia," that followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

The provision in the fourth paragraph of section 11-771 of D.C. Code, 1961 ed., that, with respect to qualifications of appointees, service during the "present emergency" in the armed forces of the United States should be included in the computation of the five-year requirements specified therein, referred to service during the emergency occasioned by World War II, and is omitted as obsolete.

Because of the lapse of time since section 11-771 of D.C. Code, 1961 ed., was enacted on Apr. 1, 1942, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for the provisions in the fifth and sixth paragraphs of that section that the chief judge should be appointed for a term of 10 years and the associate judges should be appointed initially for terms of 8 and 6 years each, and that subsequent appointments and reappointments should be for terms of 10 years each.

Changes are made in phraseology and arrangement.

### § 11-703. Absence, disability, or disqualification of judges—Vacancies—Quorum.

(a) When a judge of the District of Columbia Court of Appeals is absent, disabled, or disqualified, or when there is a vacancy in the office of judge of the court, the chief judge may designate and assign any judge of the District of Columbia Court of General Sessions to act temporarily as a judge of the court.

(b) When the chief judge of the court is absent, disabled, or disqualified, the judge next in seniority according to the date of his commission shall exercise his powers.

(c) Two judges of the court constitute a quorum. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, § 1, 6, 77 Stat. 77, 78).

Section is taken from part of the third and part of the sixth paragraphs of section 11-771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General

Sessions, and (2) section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

### § 11-704. Clerks for judges—Compensation.

Each judge of the District of Columbia Court of Appeals may appoint and remove a personal clerk and shall fix his compensation in accordance with the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88-241, § 1.)

## REFERENCE IN TEXT

The Classification Act of 1949, referred to in text, is set out as chapter 21, U.S.C., Title 5.

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11-771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

## SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

## REVISION NOTES

Based on D.C. Code, 1961 ed., 11-520a (July 1, 1902, ch. 1351, 32 Stat. 561; Oct. 23, 1962, Pub. L. 87-873, § 5(b)(c), 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 5(b)(c), 77 Stat. 78).

In Subsec. (b), "criminal division" is substituted for "criminal branch". See section 11-901 herein and revision note thereunder.

### § 11-721. Clerk—Compensation—Powers and duties.

The District of Columbia Court of Appeals shall appoint, and may remove, a clerk, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

The clerk shall exercise the same powers and perform the same duties in regard to matters within the jurisdiction of the court as are exercised and performed by the clerk of the United States Court of Appeals for the District of Columbia Circuit, as far as the latter may be applicable. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11-771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources



of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

#### § 11-722. Deputy clerks and other employees—Compensation—Duties.

Subject to the approval of the chief judge, the clerk of the District of Columbia Court of Appeals may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

The Clerk shall supervise and direct the deputies and employees so appointed. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11-771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

### SUBCHAPTER III.—JURISDICTION

#### § 11-741. Orders and judgments of Court of General Sessions and Juvenile Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from:

(1) final orders and judgments of the District of Columbia Court of General Sessions, including final orders and judgments of the Small Claims and Conciliation Branch and the Domestic Relations Branch of that court;

(2) interlocutory orders of the District of Columbia Court of General Sessions, including interlocutory orders of the Domestic Relations Branch of that court, whereby the possession of property is changed or affected, such as orders dissolving writs of attachment and the like; and

(3) final orders and judgments of the Juvenile Court of the District of Columbia.

(b) Except as provided by subsection (c) of this section, a party aggrieved by an order or judgment specified by subsection (a) of this section may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Reviews of judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and of judgments in the criminal division of that court where the penalty imposed is less than \$50, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-767, 11-771, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, §§ 6, 7, 8, 56 Stat. 194-196; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, § 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11-771, and the first and second sentences (including the proviso) of subsec. (a) of section 11-772, with section 11-767 of D.C. Code, 1961 ed., which extended to a party aggrieved by a final or interlocutory order or judgment entered in the Domestic Relations Branch of the Municipal Court the same right of appeal available in respect to a final or interlocutory order or judgment entered in the civil branch of that court. For remainder of sections 11-771 and 11-772, see tables.

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11-772a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (c), "criminal division" is substituted for "Criminal Branch". See section 11-091 herein and revision note thereunder.

Changes are made in phraseology and arrangement.

##### CROSS REFERENCES

Appeals to District of Columbia Court of Appeals, see § 17-301 et seq.

#### § 11-742. Administrative orders and decisions.

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of Appeals has exclusive jurisdiction to review the following orders and decisions of administrative agencies of the District:

(1) decisions of the Board of Pharmacy refusing to renew a license to practice pharmacy or refusing to renew a permit to lead in poisons for use in the arts or as insecticides pursuant to section 2-606;

(2) decisions of the Board of Examiners in Veterinary Medicine revoking or suspending a license to practice veterinary medicine or a branch thereof pursuant to section 2-810;

(3) orders of the Commissioners of the District of Columbia or their agent or decisions of the Commissioners denying, revoking, or suspending a motor-vehicle operator's permit pursuant to section 40-302;

(4) decisions of the Board of Examiners and Registrars of Architects annulling or revoking a certificate to practice architecture pursuant to section 2-1028;

(5) orders of the Commissioners of the District of Columbia denying, revoking, or suspending a license for a private employment agency pursuant to section 47-2101;

(6) decisions of the Commission on Licensure to Practice the Healing Art in the District of Columbia denying a license or a registration to practice the healing art pursuant to section 2-129;

(7) decisions of the Nurses' Examining Board denying registration or reregistration of a nurse or school of nursing pursuant to section 2-406;

(8) decisions of the Board of Barber Examiners revoking or refusing to issue, renew, or restore a

certificate of registration as a registered barber or barber apprentice pursuant to section 2-1110; and

(9) final decisions of the Real Estate Commission of the District of Columbia denying an application for license or suspending or revoking a license pursuant to sections 45-1403 to 45-1418.

(b) A party aggrieved by an order or decision specified by subsection (a) of this section may obtain a review thereof in the District of Columbia Court of Appeals.

(c) Upon the filing of a written petition for review praying that an order or decision specified by this section be set aside, the District of Columbia Court of Appeals has jurisdiction of the proceeding. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section is derived from subsec. (e), and the first sentence and part of the fifth sentence of subsec. (f), of section 11-772 of D.C. Code, 1961 ed.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

In addition to the jurisdiction conferred by these provisions, the District of Columbia Court of Appeals has jurisdiction to review orders of the Rent Control Administrator for the District. See section 45-1609 of the D.C. Code, 1961 ed.

For remainder of section 11-772 of D.C. Code, 1961 ed., see tables.

#### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

##### § 11-761. Contempt powers.

The District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding \$50 or imprisonment not exceeding 30 days. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-774 (Apr. 1, 1942, ch. 207, § 9, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is derived from subsec. (b) of section 11-744 of the D.C. Code, 1961 ed. For remainder of section 11-774, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

##### § 11-762. Oaths, affirmations and acknowledgments.

Each judge, the clerk, and each deputy clerk of the court may administer oaths and affirmations and take acknowledgments. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-771 (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63

Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398).

Section is derived in toto from last paragraph of section 11-771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

#### Chapter 9.—DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

##### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.

- 11-901. Continuation of court—Court of record—Divisions—Seal.
- 11-902. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.
- 11-903. Administration by chief judges—Discharge of duties.
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- 11-905. Absence, disability, or disqualification of chief judge.
- 11-906. Vacations for judges.
- 11-907. Meetings and reports.
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##### SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

- 11-931. Clerk—Compensation—General duties.
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##### SUBCHAPTER III.—JURISDICTION

- 11-961. Civil jurisdiction.
- 11-962. Transfer of civil actions to Court of General Sessions.
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##### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

- 11-981. Power of judges to issue warrants returnable to Criminal Division—Record.
- 11-982. Compelling attendance of witness—Contempt powers—Subpoenas.
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- 11-984. Receipt and care of deposits for costs, and fees—Payment of fines, costs, etc., to clerk—Deposit—Accounting.
- 11-985. Audit of accounts.

##### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

##### § 11-901. Continuation of court—Court of record—Divisions—Seal.

(a) The District of Columbia Court of General Sessions shall continue as a court of record in the District. The court shall consist of a civil division and a criminal division.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751, 11-751a, 11-752, 11-755 (Apr. 1, 1942, ch. 207, § 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 706, § 1, 63 Stat. 887; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Aug. 24, 1962, Pub. L. 87-596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-751, the second paragraph of section 11-752, and part of the first sentence



of subsec. (a) of section 11-755 of D.C. Code, 1961 ed. For remainder of sections 11-752 and 11-755, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1963, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11-751 of D.C. Code, 1961 ed., provided: "The Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as 'The Municipal Court for the District of Columbia'" This language is omitted as executed and obsolete, and in its place subsec. (a) of this section merely continues the court (now the Court of General Sessions) so created in the consolidation of the two former courts.

The terms "civil division" and "criminal division" are substituted for reference in the first sentence of section 11-755(a) of D.C. Code, 1961 ed., to "criminal" and "civil branches", to conform with designations used elsewhere in that same section. See, also, the preliminary rule preceding Section I of Part I of the Civil Rules, and Rule 1 of the Criminal Rules of the Court. The Civil Division, in addition to its regular civil branch, has a Small Claims and Conciliation Branch, a Domestic Relations Branch, and, although apparently not designated by statute, a Landlord and Tenant Branch. See other provisions in this Part, and Part I, Sections II—IV, of the above-cited Court rules.

Changes are made in phraseology.

#### CROSS REFERENCES

Accounts audited, see § 11-985.

Attachment proceedings, see § 16-533.

Challenged ballots, appeal from decision of Board of Elections, see § 1-1109.

Claim against attached property, see §§ 15-522—15-524.

Costs, see §§ 15-711 and 15-712.

Domestic Relations Branch, see § 11-1101 et seq.

Forcible entry and detainer, see §§ 11-735 to 11-739.

Interest, see § 15-131.

Judgments and executions, see § 15-131.

Registration of voters, appeal from decision of Board of Elections, see § 1-1107.

Replevin actions, see §§ 16-3731 et seq.

Trial of right to attached property, see § 15-521.

#### § 11-902. Composition — Appointment, qualifications, tenure, salaries, and oath of judges—Removal.

(a) The District of Columbia Court of General Sessions shall consist of a chief judge and fifteen associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been a member of the bar of the District of Columbia for a period of at least five years, and, for a period of at least five consecutive years immediately prior to his appointment, either has been actively engaged in the practice of law or has been employed as an attorney in the District in the government of the United States or in the government of the District of Columbia.

(c) Each judge shall be appointed or reappointed for a term of ten years each, which terms shall be staggered as heretofore provided for; and he shall

continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of \$18,000, and each associate judge shall receive an annual salary of \$17,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-752, 11-753 (Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 191; July 28, 1949, ch. 369, § 2, 63 Stat. 482; Oct. 25, 1949, ch. 706, §§ 1-3, 63 Stat. 887; July 11, 1955, ch. 302, § 2, 69 Stat. 290; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Aug. 24, 1962, Pub. L. 87-596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates the first paragraph of section 11-752 and section 11-753 of D.C. Code, 1961 ed. Remainder of section 11-752 is carried into section 11-901 of this title.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The words in section 11-753 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia \* \* \* : *Provided, however,* That not more than two nonresident persons may be appointed and serve as judges of the said Municipal Court at any one time", which followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

Section 1 of act Apr. 1, 1942, ch. 207, 56 Stat. 190, contained a third paragraph which was not set out in section 11-751 or 11-752 of D.C. Code, 1961 ed. (to which the other provisions of that section were classified), because of later enactments increasing the number of judges on the Municipal Court (now, Court of General Sessions), and in the case of the act of Oct. 25, 1949, ch. 706, § 1, cited above, providing that appointments and reappointments with respect to the additional judges authorized by that act (3 more than the original 10) should be for terms of 10 years each. However, section 1 of the 1942 act (and section 2 thereof, which is carried into this section), in providing for the appointment of the original 10 judges, did set the pattern for staggered terms. The third paragraph of section 1 provided that the terms of the original 10 judges should be in accordance with the following schedule: the first 2 appointments, 10 years; the second 2 appointments, 6 years. It further provided that the judges of the Police Court and of the first Municipal Court (which that act merged to establish the second Municipal Court) holding office on the effective date of that act (judges of the Police Court held office for 6 years, and judges of the first Municipal Court held office for 4 years) should, however, serve as judges of the second Municipal Court until the expiration of their respective commissions and until their successors were appointed and qualified. Section 2 of the 1942 act provided that subsequent appointments and reappointments to the second Municipal Court should be for terms of 10 years each, and, as stated, section 1 of the act of Oct. 25, 1949, ch. 706, in increasing the number of judges from 10 to 13, provided that appointments and reappointments with respect to the 3 additional judges should be for 10 years each. Section 103(a) of act Apr. 11, 1956, ch. 204, cited above, amended the 1949 act to increase the total number from 13 to 16, without further reference to tenure. Because of the lapse of time since the original enactments, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for all prior provisions that related to tenure.

Changes are made in phraseology and arrangement.



**§ 11-903. Administration by chief judge—Discharge of duties.**

The chief judge of the District of Columbia Court of General Sessions shall administer generally and superintend the business of the court. He shall give his attention to the discharge of the duties especially pertaining to his office and to the performance of such additional judicial work as he is able to perform. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87-783, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section is derived from the third sentence of subsec. (a) and all of subsec. (b) of section 11-754 of D.C. Code, 1951 ed. For remainder of section 11-754, see tables.

Changes are made in phraseology and arrangement.

**CROSS REFERENCE**

Recall of retired judges to service, see § 11-1701.

**§ 11-904. Designation and assignment of judges—Sessions.**

(a) The chief judge of the District of Columbia Court of General Sessions shall, from time to time and for such periods as he determines designate the judges to preside in and attend the divisions and several branches and sessions of the court. He may:

- (1) except as provided by sections 11-1103 and 11-1303, determine the number and fix the time of the various sessions of the court; and
- (2) arrange the business of the court, and divide it and assign it among the judges.

Each associate judge shall attend and serve at the division, branch, or sessions of the court to which he is assigned.

(b) When the chief judge of the District of Columbia Court of Appeals finds it in the public interest to do so, he may designate and assign a judge of that court to act temporarily as a judge of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-751a, 754, 11-771, 11-771a (Apr. 1, 1942, ch. 207, §§ 3, 6, 56 Stat. 191, 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates the first two sentences of subsec. (a) of section 11-754 the first sentence of the second paragraph of subsec. (c) of section 11-754, and the seventh sentence of the sixth paragraph of section 11-771 of D.C. Code, 1961 ed. For remainder of sections 11-754 and 11-771, see tables.

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

**§ 11-905. Absence, disability, or disqualification of chief judge.**

When the chief judge of the District of Columbia Court of General Sessions is absent, disabled, or disqualified, his duties shall devolve upon and be performed by the associate judges of the Court according to the order of seniority of their commissions. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fourth paragraph of subsec. (c) of section 11-754 of the D.C. Code, 1961 ed. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

**§ 11-906. Vacations for judges.**

Each judge of the District of Columbia Court of General Sessions is entitled to vacation, not to exceed thirty-six court days in a calendar year, to be taken at times determined by the chief judge. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fifth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

**§ 11-907. Meetings and reports.**

(a) The judges of the District of Columbia Court of General Sessions shall meet together at least once each month for the consideration of those matters pertaining to the administration of justice in the court which may be brought before them. The chief judge shall fix the times for the meetings.

(b) Each associate judge shall submit to the chief judge a monthly written report, in a form prescribed by the chief judge, of the duties performed by him, specifying:

- (1) the number of days attendance in court of the judge during the month covered;
- (2) the branch courts upon which he attended;
- (3) the number of hours per day of his attendance; and
- (4) such other data as the chief judge requires.

(c) The chief judge shall submit to the Attorney General of the United States and to the Commissioners of the District of Columbia a quarterly written report of the business of the court and of the duties performed by each judge of the court during the preceding three months. A copy of the report shall be filed in the office of the clerk of the court and shall be available and subject to public inspection during business hours. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from the first paragraph, the second sentence of the second paragraph, and the fourth paragraph of section 11-754(c) of the D.C. Code, 1961 ed. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

## § 11-908. Clerks for judges—Compensation.

Each judge of the District of Columbia Court of General Sessions may appoint and remove a personal clerk and shall fix his compensation in accordance with the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 2, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from that part of the seventh paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed., that was not carried into section 11-932 of this revision. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

## SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

## § 11-931. Clerk—Compensation—General duties.

(a) The District of Columbia Court of General Sessions may appoint and remove a clerk, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

(b) In addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the Court of General Sessions shall keep such dockets and records and perform such other duties as the court prescribes. Dec. 23, 1963, 77 Stat. 488, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-713, 11-714, 11-751a, 11-754 (Mar. 3, 1901, ch. 854, § 38, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates section 11-713 and section 11-714 with the sixth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court formed from the 1942 merger of courts referred to below) to the District of Columbia Court of General Sessions.

Sections 11-713 and 11-714 of D.C. Code, 1961 ed., related to the clerk of the first Municipal Court prior to its merger, in 1942, with the Police Court to form the second Municipal Court. Section 11-713 provided that the clerk should keep a docket and described in detail the entries to be made in the docket (which, considering the jurisdiction of the first Municipal Court, related only to civil

causes). The Court of General Sessions (successor to the second Municipal Court) has a civil division and a criminal division, and the civil division has several branches. Further, section 11-1122 requires that a separate docket be kept for the Domestic Relations Branch of the civil division. The sixth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed., provided that the clerk should "have and exercise the powers and authority heretofore had or exercised by the clerk of the Police Court of the District of Columbia and the clerk of the Municipal Court of the District of Columbia" (the first Municipal Court), but it made no reference to "duties" as distinguished from "power" or "authority". It would seem that the duties of the clerk, with respect to the keeping of dockets and records and to other matters not covered by law, are now prescribed by the court (except in the case of the Domestic Relations Branch, which, as stated, is required by law to keep a separate docket). See the Civil Rules of the court, rules 77 and 78, and the Criminal Rules thereof, rule 4. Therefore, subsec. (b) of this section provides merely that, in addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the court shall keep such docket and records and perform such other duties as may be prescribed by the court.

The provision in the sixth paragraph of section 11-754(c) of D.C. Code, 1961 ed., that the clerk of the Municipal Court (established by the merger of the two former courts) should have and exercise the powers and authority theretofore had or exercised by the clerks of the two former courts is omitted as unnecessary.

The last paragraph of section 11-713 of D.C. Code, 1961 ed., provided as follows: "And it shall be his duty to furnish a copy of any judgment rendered by him when required by either party to the action. If he shall omit to keep such docket or be guilty of any other negligence or omission whereby the plaintiff, having obtained a judgment before him, shall lose his debt, the clerk shall pay and satisfy to the plaintiff the debt, interest, and costs so lost, to be recovered in an action of debt against said clerk and his surety or sureties, with any additional interest that may have accrued". These provisions are omitted. As originally enacted in 1901, they related to justices of the peace. The act of Feb. 17, 1909, ch. 134, 35 Stat. 625, in redesignating the justice of the peace courts as the Municipal Court, made provision for the appointment of a clerk and provided that he should "keep a docket similar to the one heretofore provided for justices of the peace", but there is nothing therein to indicate that the duties, responsibilities, and liabilities prescribed in the quoted paragraph were transferred to the clerk. In any event, the first sentence of the paragraph relates to a matter which could, and, if necessary, should, be covered by court rule. As for the second sentence, it is believed to be obsolete. Like its predecessor (the second Municipal Court), the Court of General Sessions, as contradistinguished from the former justice of the peace court, is a court of record.

For remainder of section 11-754 of D.C. Code, 1961 ed., see tables.

## § 11-932. Deputy clerks and other employees—Compensation—Supervision—Process—Powers.

(a) Subject to the approval of the chief judge, the clerk of the District of Columbia Court of General Sessions may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

(b) The deputies and employees appointed under subsection (a) of this section shall be under the supervision and direction of the clerk.

(c) In all civil actions in the Court of General Sessions, process shall be signed by the clerk or deputy clerks in the name of the court. The deputy clerks may sign the name of the clerk to any official act required by law or by practice of the court to be



performed by the clerk. In such case, the signature shall be: "\_\_\_\_\_, Clerk, by \_\_\_\_\_, Deputy Clerk". (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-711, 11-151a, 11-754 (Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191, Oct. 23, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962; Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates section 11-711 of D.C. Code, 1961 ed., which related to the clerk and "assistant clerk" of the first Municipal Court (merged in 1942 with the former Police Court to form the second Municipal Court), with part of the seventh paragraph of subsec. (c) of section 11-754 thereof. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia, which was formed from the 1942 merger referred to above, to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

### § 11-933. Probation officer—Compensation, powers and duties.

The District of Columbia Court of General Sessions may appoint and remove a probation officer of the court, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

The probation officer shall exercise such powers and perform such duties as may be prescribed by law. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from the eighth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provision of the eighth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed., that the probation officer shall "have and exercise the powers and authority heretofore had or exercised by the probation officer of the Police Court of the District of Columbia" is omitted as unnecessary. The powers and duties of probation officers are set out in general terms in section 24-102 of D.C. Code, 1961 ed. In place of the omitted provision, the second paragraph of this section provides that the probation officer shall exercise such powers and perform such duties as may be prescribed by law.

Changes are made in phraseology.

### § 11-934. Assistant probation officers and other employees—Compensation—Supervision.

Subject to the approval of the chief judge, the probation officer of the District of Columbia Court of General Sessions may appoint and remove such assistant probation officers and other employees of the probation office as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

The probation officer shall supervise and direct the assistants and employees so appointed. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from the ninth paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed. For remainder of section 11-754, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

The final (tenth) paragraph of subsec. (c) of section 11-754 of D.C. Code, 1961 ed., provided: "All officials and employees of the Police Court of the District of Columbia and of the Municipal Court of the District of Columbia holding office on the effective date of this subchapter [which merged the Police Court and the former Municipal Court to form the second Municipal Court] shall continue in office unless and until they are removed therefrom; and all appropriations for the said Police Court or the said Municipal Court shall be available for the payment of the salaries and expenses of The Municipal Court for the District of Columbia as hereby established". This paragraph is omitted as obsolete. Further, a separate section in the bill to enact this Part provides for continuance in office of present incumbents for the balance of their terms unless or until removed.

### § 11-935. Reporters' fees for transcripts.

In addition to their annual salaries, official reporters for the District of Columbia Court of General Sessions may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the court. The official reporters shall furnish all supplies at their own expense. The court shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-754b (July 18, 1947, ch. 267, 61 Stat. 381; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171).

Section is derived from section 11-754b of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District Court of General Sessions.

Changes are made in phraseology.



## SUBCHAPTER III.—JURISDICTION

## § 11-961. Civil jurisdiction.

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions, including civil actions against executors, administrators and others fiduciaries, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of \$10,000, exclusive of interest and costs, as well as of all crossclaims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved.

It does not have jurisdiction of:

- (1) cases involving title to real property, except as provided in section 11-1141;
- (2) actions against judges of the Court of General Sessions or other officers for official misconduct; or
- (3) counterclaims, crossclaims, or any other claims whether or not arising out of the same transaction or occurrence and interposed in actions over which the United States District Court for the District of Columbia has jurisdiction.

(b) Within the limits of its jurisdiction provided by subsection (a) of this section, the Court of General Sessions has jurisdiction of cases of trespass upon or injury to real property. If the defendant, in such a case, files with the court an affidavit that he claims title to the property, setting forth the nature of his title, the court may not take further cognizance of the case.

(c) The Court of General Sessions has jurisdiction over all civil cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-704, 11-751a, 11-755, 11-755 note (Mar. 3, 1901, ch. 854, §§ 9, 10, 31 Stat. 1191; Feb. 17, 1901, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 2, 77 Stat. 77, 78).

Section consolidates that part of subsec. (a) of section 11-755 of D.C. Code, 1961 ed., relating, as amended by the act of Oct. 23, 1962, to civil jurisdiction of the District of Columbia Court of General Sessions, with section 704 of the Code, which related to civil jurisdiction of the first Municipal Court (before that court was merged with the Police Court by the act of Apr. 1, 1942, to form the second Municipal Court), and with acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310, which were set out as a note under section 11-755 of D.C. Code, 1961 ed., and with (the 1901 and 1921 acts) collectively also related to civil jurisdiction of the first Municipal Court.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia, which was the court formed from the 1942 merger mentioned above, to the District of Columbia Court of General Sessions.

After its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11-755 of D.C. Code, 1961 ed., in addition to providing for the jurisdiction carried into subsec. (a) and the limitation carried into subsec. (a)(3) of this section, provided that the Court of General Sessions and the judges thereof shall "have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Municipal Court for the District of Columbia

or the judges thereof". This provision is omitted as no longer necessary inasmuch as provisions of law prescribing civil jurisdiction of the first Municipal Court, that were not covered or superseded by the provisions of section 11-755 (prior to the 1962 amendment or by other provisions of the act of April 1, 1942, relating to jurisdiction of the second Municipal Court, have been revised to relate to the Court of General Sessions or the judges thereof and are carried into this revision.

In addition to the provisions carried into subsec. (a) (1) (2) of this section (limiting the jurisdiction), acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310 (D.C. Code, 1961 ed., § 11-755 note), which related to the first Municipal Court, provided that it have exclusive jurisdiction in civil cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest and costs, did not exceed \$1,000, as follows: in all civil cases in which the amount claimed to be due for debt or damages arose out of contracts, express or implied, or damages for wrongs or injuries to persons or property, including all proceedings by attachment or in replevin, and in cases for the recovery of damages for assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. These provisions are omitted as superseded and covered by the broader provisions of section 11-755(a) of D.C. Code, 1961 ed., relating to the Court of General Sessions, that are carried into subsec. (a) of this revised section.

Subsec. (b) of this section is derived from section 11-704 of D.C. Code, 1961 ed., which related to the first Municipal Court. It is carried into this section on the authority of section 11-755(a) of D.C. Code, 1961 ed., under which, prior to the amendment thereof by the act of Oct. 23, 1962, the Municipal Court for the District of Columbia assumed the jurisdiction of the two former courts (Police Court and first Municipal Court), and, after the 1962 amendment, the Court of General Sessions assumed, as stated above, the jurisdiction of the Municipal Court for the District of Columbia. As herein set out, subsec. (b) relates to the Court of General Sessions.

Changes are made in phraseology.

For remainder of section 11-755 of D.C. Code, 1961 ed., see tables.

## § 11-962. Transfer of civil actions to Court of General Sessions.

In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but prior to trial thereof that the action will not justify a judgment in excess of \$10,000, the court may certify the action to the District of Columbia Court of General Sessions for trial. The pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the clerk of the Court of General Sessions. Promptly thereafter, the Court of General Sessions shall call the case for trial. The Court of General Sessions shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action, even though it exceed the sum of \$10,000. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 195, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, § 3, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 3, 77 Stat. 78).

Section is derived from subsec. (a) of section 11-756 of D.C. Code, 1961 ed. For remainder of section 11-756, see tables.

Changes are made in phraseology.



## CROSS REFERENCES

Deposits for jury trials, see § 15-713.

Nonresident witnesses, see § 14-104.

## § 11-963. Criminal jurisdiction—Commitment.

(a) Except as otherwise expressly provided by this section or other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of:

(1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and

(2) offenses against municipal ordinances or regulations in force in the District.

(b) The Court of General Sessions does not have jurisdiction of the offenses of libel, conspiracy, or violation of the postal or pension laws of the United States.

(c) In all cases, whether cognizable in the Court of General Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.

(d) The Court of General Sessions has jurisdiction of all criminal cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-755a, 23-103, 24-401 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 43, 934, 31 Stat. 1196, 1341; June 30, 1902, ch. 1329, 32 Stat. 537; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1943, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-755a of D.C. Code, 1961 ed., which related to criminal jurisdiction of the Municipal Court for the District of Columbia (now District of Columbia Court of General Sessions), successor to the former Police Court and former Municipal Court of the District of Columbia; that part of subsec. (a) of section 11-755 of the Code which, as amended in 1962, vested in District of Columbia Court of General Sessions the criminal jurisdiction that had been vested in the said Municipal Court for the District of Columbia; section 751a of the Code, which changed the name of the court to the District of Columbia Court of General Sessions and provided for substitution of the latter reference for references in other laws to the Municipal Court; and sections 23-103 and 24-401 of the Code.

In subsec. (a), words "Except as otherwise expressly provided by this section or other law" are substituted for the phrase in section 11-755a of the D.C. Code, 1961 ed., "except where otherwise expressly herein provided", for the purpose of clarity. Subsec. (b) of this section states certain exceptions (also taken from section 11-755a) to the jurisdiction conferred in subsec. (a). See, also, section 11-551 et seq. of this revised title relating to jurisdiction of the Juvenile Court.

Section 11-755a of D.C. Code, 1961 ed., as affected by section 11-751a of the Code, conferred jurisdiction on the Court of General Sessions (with the exceptions stated in subsection (b) of this revised section), concurrently with the District Court, of all crimes and offenses committed in the District "not capital or otherwise infamous and not punishable by imprisonment in the penitentiary". Yet section 23-103 of the 1961 ed., and the fourth and fifth sentences of section 24-401 thereof, which were derived from the same act (Mar. 3, 1901, ch. 854, § 934, 31

Stat. 1341), while not couched in jurisdictional language, provided, as affected by section 11-751a of the Code, that when the punishment for an offense might be for more than one year the prosecution "shall" be in the District Court, and that when the maximum punishment was a fine only or imprisonment for one year or less the prosecution "may" be in the Court of General Sessions. This was actually a limitation on the jurisdiction of the Court of General Sessions, and subsec. (a) (1) of this section is taken from the provisions of those sections, rather than from those of section 11-755a quoted above.

The first three sentences of section 24-401 of D.C. Code, 1961 ed., provided as follows: "When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision". These provisions are omitted as superseded by later law. See D.C. Code, 1961 ed., § 24-425. See, also, section 4082 et seq. of Title 18, United States Code.

Changes are made in phraseology and arrangement.

For remainder of section 11-755 of D.C. Code, 1961 ed., see tables.

## CROSS REFERENCES

Abandonment of prosecution and discharge of bail, see § 23-104.

Appeals, see § 17-101 et seq.

Arrest under Uniform Act on Fresh Pursuit, commitment on discharge, see §§ 23-501, 23-502.

Bail forfeiture as a lien, see § 15-102.

Bail in habeas corpus proceedings, see § 16-1906.

Bail of fugitives from justice, forfeiture, see §§ 23-404, 23-405.

Cash bail and forfeiture thereof, see § 23-106.

Designation of officer to take bonds and collateral, see § 28-610.

Fugitives from justice, arrest, commitment, bail, discharge, see § 23-401 et seq.

Issuance of search warrant, see § 23-301.

Probation system, see § 24-101 et seq.

Professional bondsmen, rules and regulations, see § 28-601 et seq.

## SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

## § 11-981. Power of judges to issue warrants returnable to Criminal Division—Record.

Each judge of the District of Columbia Court of General Sessions may, at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the criminal division of the court against persons accused of crimes and offenses committed in the District of Columbia. In every such case, he shall make a record of his proceedings in a book to be kept for that purpose. The warrants shall be issued free of charge. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-705, 11-751a, 11-755 (Apr. 21, 1906, ch. 1646, 34 Stat. 126; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-705 of D.C. Code, 1961 ed., which, as originally enacted, related to the judges of the first Municipal Court and provided that the warrants referred to should be returnable to the Police Court, with that part of subsec. (a) of section 11-755 thereof, which, prior to amendment thereof by the act of Oct. 23, 1962, provided, in connection with the merger, by the act of Apr. 1, 1942, of the first Municipal Court and the



Police Court, to form the second Municipal Court, provided that the judges of the court thus formed should have and exercise the same powers theretofore had or exercised by the judges of the two former courts, and which, after the 1962 amendment, provided that the judges of the District of Columbia Court of General Sessions should have and exercise the same powers and jurisdiction theretofore had or exercised by the judges of the Municipal Court formed from the 1942 merger.

In view of the 1942 merger referred to above, section 11-705 had been reworded in the 1961 edition of the Code to provide for return of the warrants to the criminal division of the Municipal Court, which had criminal jurisdiction comparable with that of the former Police Court.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, referred to above, is also shown as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Like its predecessor (the Municipal Court), the District of Columbia Court of General Sessions, in addition to its special branches, has a civil division and a criminal division.

Changes are made in phraseology.

### § 11-982. Compelling attendance of witnesses—Contempt powers—Subpoenas.

(a) The District of Columbia Court of General Sessions may compel the attendance of witnesses by attachment, and, in any civil or criminal case or proceeding in the court, the judge may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding \$50 or imprisonment not exceeding 30 days.

(b) At the request of any party subpoenas for attendance at a hearing or trial in the District of Columbia Court of General Sessions shall be issued by the clerk of the court. A subpoena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena. The form, issuance and manner of service of a subpoena shall be as otherwise prescribed by Rule 45 of the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 159, § 410, 67 Stat. 180; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, § 4, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 4, 77 Stat. 78).

Section is derived from subsec. (c) of section 11-756 of D.C. Code, 1951 ed. For remainder of section 11-756, see tables.

Changes are made in phraseology.

### § 11-983. Oaths, affirmations, and acknowledgments.

Each judge of the District of Columbia Court of General Sessions may administer oaths and affirmations and take acknowledgments. The clerk of the court and his deputies may administer oaths and affirmations and take acknowledgments in all cases pending in the court or about to be filed therein. Dec. 23, 1963, 77 Stat. 491, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-712, 11-712 note, 11-751a, 11-754, 11-754a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 49, 54, 31 Stat. 1198; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, §§ 3, 4, 56 Stat. 191, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 28, 1949, ch. 782, title XI,

§ 1106(a), 63 Stat. 972; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-66, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the following provisions of D.C. Code, 1961 ed.: Section 11-712, which empowered the clerk and assistant clerk of the former municipal court (before that court's consolidation with the police court in 1942, to form the Municipal Court for the District of Columbia, as provided in section 11-751 of such Code) to administer oaths in all cases pending in that court, or about to be filed therein; acts June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 54, 31 Stat. 1198, set out as a note under said section 11-712 of the Code, and empowering the clerk and deputy clerks of the former police court to administer oaths and affirmations; that part of the sixth paragraph of subsec. (c) of section 11-754 which, in connection with the Municipal Court for the District of Columbia formed out of the consolidation in 1942 of the former municipal court and the police court, provided that the clerk of the court so formed should have and exercise the same powers and authority had or exercised by the clerks of the two former courts; section 11-754a which, as originally enacted, empowered the judges of the former police court to administer oaths to public officers and take acknowledgments of deeds; and that part of subsec. (a) of section 11-755 which, as amended by the act of Oct. 23, 1962, provided that the judges of the District Court of General Sessions should have and exercise the same powers as were theretofore had or exercised by the judges of the Municipal Court for the District of Columbia (prior to the 1962 amendment), the section conferred upon the judges of the Municipal Court for the District of Columbia the same powers theretofore had or exercised by the judges of the former municipal court and the former police court.

Section 11-751a of D.C. Code, 1961 ed., is also shown as one of the sources of this section, as section 11-751a changed the name of the court to the District of Columbia Court of General Sessions.

Section 11-754a of D.C. Code, 1961 ed., when originally enacted, empowered the former Police Court judges to administer oaths and affirmations to "public officers" only. However, act Feb. 17, 1909, ch. 134, 35 Stat. 623 (624), which related to the first Municipal Court, empowered the judges of that court to administer oaths generally, without restriction, and this provision was not repealed upon the merger of the two courts in 1942, and, as stated above, section 11-755(a) of D.C. Code, 1961 ed., prior to its amendment in 1962, extended the powers of the judges of the two former courts to the judges of the Municipal Court formed from the 1942 merger. Therefore, in the consolidated provisions as herein set out, the restriction of the administration of oaths and affirmations, by the judges, to public officers only, is omitted.

While the sixth paragraph of section 11-754(c), D.C. Code, 1961 ed., extended only the powers of the respective clerks of the former Police Court and the former Municipal Court to the clerk of the Municipal Court formed from the 1942 merger, and made no reference to deputy clerks in connection therewith, a consideration of the provisions relating to the merger of the two former courts, as a whole, suggests that the legislative intent was likewise to extend, to the deputy clerks of the successor Municipal Court, whatever powers the deputy or assistant clerks of the two former courts had by statute. Further, according to information received, it is current practice for the judges, clerks, and deputy clerks of the present court to administer oaths and affirmations and to take acknowledgments. Therefore, this section so provides.

### § 11-984. Receipt and care of deposits for costs, and fees—Payment of fines, costs, etc., to clerk—Deposit—Accounting.

(a) The clerk of the District of Columbia Court of General Sessions shall receive and care for all deposits for costs made and fees exacted under the rules governing the fee charges in the civil division of the court, and shall make a weekly deposit with the Board of Commissioners or its authorized representative of all fees earned during the preceding



week. The money so collected shall be covered into the Treasury to the credit of the District of Columbia.

(b) The clerk shall return to parties making the deposits specified by subsection (a) of this section any part of a deposit that remains in his hands over and above the earned fees in completed cases, and shall render an itemized statement to the Board of Commissioners or its authorized representative of every fee earned, on forms and in the manner prescribed by the Board or its authorized representative. Any part of a deposit remaining in the clerk's hands for a period of three years, for which claim has not been made by the party entitled to receive it, shall revert to the District of Columbia, and shall be paid forthwith by the clerk to the Board or its authorized representative as part of the revenues of the District.

(c) Fines, penalties, costs, and forfeitures imposed or taxed in the criminal division of the Court of General Sessions shall be paid to the clerk, either with or without process or on process ordered by the court. On the first secular day of each week, the clerk shall deposit with the Board of Commissioners or its authorized representative the total amount thereof collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit upon forms and in the manner prescribed by the Board or its authorized representative.

(d) Moneys collected in the criminal division of the Court of General Sessions remaining in the hands of the clerk for a period of two years or more, for which claim has not been made by the parties entitled thereto, shall revert to the District of Columbia, and shall be paid by the clerk to the Board of Commissioners or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Further, the provisions, as herein revised, give effect to section 11-751a of D.C. Code, 1961 ed., which, as stated above, changed the name of the court to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For remainder of sections 11-754 and 11-755 of D.C. Code, 1961 ed., see tables.

Based on D.C. Code, 1961 ed., §§ 11-710, 11-710a, 11-710c, 11-751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 6, 58, 31 Stat. 1191, 1199; Feb. 17, 1909, ch. 134, 35 Stat. 624; May 18, 1910, ch. 248, 36 Stat. 404; Sept. 1, 1916, ch. 433, § 12, 39 Stat. 718; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates, with changes in phraseology, sections 11-710a and 11-710c of D.C. Code, 1961 ed., which related to payment, deposit, and accounting for fines, penalties, costs, and forfeitures imposed or taxed in criminal cases by the former Police Court (that is, until the merger act of Apr. 1, 1942, the provisions of those two sections related to that court), and section 11-710, which related to receipt, custody, deposit, and accounting for fees and costs paid into the Municipal Court in civil cases prior to the consolidation of the two courts into a single Municipal Court.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a

changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

As set out herein, the provisions relate to the Court of General Sessions, which, under section 11-755 of D.C. Code, 1961 ed., as amended by section 2 of the act of Oct. 23, 1962, assumed the jurisdiction and powers of the Municipal Court for the District of Columbia. Prior to the 1962 amendment, the same section, enacted in 1942, had provided for the assumption, by the Municipal Court for the District of Columbia, of the jurisdiction and powers of the two courts merged by the 1942 act; that is, the Police Court and the first Municipal Court. The Court of General Sessions has several branches, including a civil division and a criminal division.

Sections 11-710, 11-710a and 11-710c of D.C. Code, 1961 ed., provided that the moneys be deposited by the clerk with the collector of taxes, and that (in the case of sections 11-710 and 11-710c) the itemized statements to accompany the deposits be upon such forms and in such manner as prescribed by the auditor of the District. However, a number of changes in the administration of the District of Columbia have since taken place. Presidential Reorganization Plan No. 5 of 1952 abolished a number of offices, including the Office of the Auditor and the Office of the Collector of Taxes, and transferred the functions thereof, and in each case the functions of officers, employees, and subordinate agencies, to the Board of Commissioners of the District of Columbia. The Plan authorized the Commissioners to delegate any of the functions so transferred to any member of the Board or to any other officer, employee, or agency of the Government of the District of Columbia, except the courts thereof. The Board's Reorganization Order No. 1, dated July 1, 1952, continued the functions, powers, etc., until otherwise ordered, in the officer, agency, or employee by whom or which they were being performed and exercised at the time of the taking effect of the Plan. The Board's Reorganization Order No. 3, dated Aug. 28, 1952, established a Department of General Administration with a Director at its head, and, along with other offices and functions, transferred to that Department the Office of the Auditor and the Office of the Collector of Taxes and the respective functions of each. The Board's Reorganization Order No. 19, dated Nov. 10, 1952, established in the Department of General Administration an Internal Audit Office and transferred to it some of the personnel under the existing Auditor, and their functions. The Board's Reorganization Order No. 20, also dated Nov. 10, 1952, established in the Department of General Administration a Finance Office with a Finance Officer at its head, and created therein several boards and offices, including the Office of Collector of Taxes and an Accounting Office. It transferred to the Finance Office nearly all the functions of the former Office of the Collector of Taxes, and, as amended by the Board's Reorganization Order No. 25, dated Dec. 30, 1952, apparently all the functions of divisions, positions, etc. (including the Accounting Division) under the responsibility of the then existing Auditor that were not transferred to the Internal Audit Office by the Board's Reorganization Order No. 19. Reorganization Order No. 20 abolished the Office of Auditor and the former Office of the Collector of Taxes.

Reorganization Order No. 121, 57-3276, dated Dec. 12, 1957, as amended, superseded said Reorganization Order No. 20, as amended, but continued within the Department of General Administration the Finance Office, headed by the Finance Officer.

In accordance with the reorganizational changes described above, it would seem that the duties prescribed in sections 11-710 and 11-710c of D.C. Code, 1961 ed., with respect to the auditor, are now performed by the Finance Officer, Department of General Administration, and that the reference in each of those two sections, as well as in section 11-710a of D.C. Code, 1961 ed., to the collector of taxes, is also obsolete. Under Part IV of the above-mentioned Reorganization Order No. 121, the functions of the Finance Office are divided among the Office of the Finance Officer, the Property Tax Division, the Revenue Division, the Treasury Division, the Enforcement Division, the Accounting Division, and the Processing Division.



However, the above offices were established by orders of the Board of Commissioners, and they may be changed at any time. Under Presidential Reorganization Plan No. 5, referred to above, the ultimate responsibility for the delegated functions is in the Board of Commissioners. Therefore, references in sections 11-710, 11-710a and 11-710c of D.C. Code, 1961 ed., to the auditor and/or the collector of taxes are, in this section, changed to "Board of Commissioners [or "Board"] or its authorized representative".

Section 11-710a of D.C. Code, 1961 ed., provided that the moneys paid over by the clerk of the municipal court (formerly, the reference was to the police court) be paid by the collector of taxes "for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia". Pursuant to sections 47-126 and 47-130a of the D.C. Code, 1961 ed., subsec. (d) of this section, as revised, provides that the moneys shall be paid to the Board of Commissioners, or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia.

#### CROSS REFERENCE

Disposition of fees, see § 47-126.

### § 11-985. Audit of accounts.

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the District of Columbia Court of General Sessions at the end of every quarter, and in the performance of this duty shall have access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-710b, 11-751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 59, 31 Stat. 1199; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. S. 88-60, § 1, 77 Stat. 77).

The provisions of section 11-710b of D.C. Code, 1961 ed., related to the Police Court until, by the act of Apr. 1, 1942, that court was merged with the first Municipal Court to form the second Municipal Court, after which they related to the Municipal Court. In this section, they are made applicable to the Court of General Sessions, to which the name of the Municipal Court was changed by the act of Oct. 23, 1962, § 1 (section 11-751a of D.C. Code, 1961 ed., also cited, because of the change in name, as one of the sources of this section).

In this section, "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor", and words "and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of this substitution. See revision note under section 11-984 herein.

Changes are made in phraseology.

## Chapter 11.—DOMESTIC RELATIONS BRANCH OF COURT OF GENERAL SESSIONS

### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.

- 11-1101. Continuation of Branch.
- 11-1102. Judges—Assignment.
- 11-1103. Sessions.

### SUBCHAPTER II.—OFFICERS AND EMPLOYEES

- 11-1121. Clerk and other personnel.
- 11-1122. Duties of clerk regarding docket.

### SUBCHAPTER III.—JURISDICTION

Sec.

- 11-1141. Exclusive jurisdiction.

### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

- 11-1161. Powers of Branch.

### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

#### § 11-1101. Continuation of Branch.

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-758 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 101, 70 Stat. 111; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-758 of D.C. Code, 1961 ed., which established (in 1956) the Domestic Relations Branch in the Municipal Court for the District of Columbia, with that part of the first sentence of subsec. (a) of section 11-755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Domestic Relations Branch. For remainder of section 11-755, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Domestic Relations Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11-901.

#### § 11-1102. Judges—Assignment.

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the court, who shall serve in that branch during their tenures of office, but if the chief judge of the court finds the work of the Domestic Relations Branch will not be adversely affected thereby, he may assign any judge of the Domestic Relations Branch to perform the duties of any other judge of the court. The chief judge of the court may assign any other judge of the court to serve temporarily in the Domestic Relations Branch if he finds the work of the Domestic Relations Branch requires the assignment. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-760 (Apr. 11, 1956, ch. 204, § 103(b), 70 Stat. 112; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

At the beginning, the words "The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the Court, who shall serve in that branch during their tenures in office" are substituted for "The judges appointed to the additional positions authorized by the amendments to section 11-752 shall during their tenures of office serve as judges of the Domestic Relations Branch" for the purpose of clarification. Section 103(a) of the above-cited



act of Apr. 11, 1956, amended section 11-752 of D.C. Code, 1961 ed., to increase the number of judges of the Municipal Court (now, the Court of General Sessions) from 13 to 16, and the above-cited 103(b) of that act, from which this section is derived, provided that the judges appointed to the additional positions so provided for should, during their tenures of office, serve as judges of the Domestic Relations Branch. See section 11-902 herein and revision note thereunder.

### § 11-1103. Sessions.

The Domestic Relations Branch, with at least one judge in attendance, shall be open for the transaction of business every day of the year except Saturday afternoons, Sundays, and legal holidays, and, if deemed necessary, may also hold night sessions. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88-241, § 1).

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-768 (Apr. 11, 1956, ch. 204, § 112, 70 Stat. 113).

## SUBCHAPTER II.—OFFICERS AND EMPLOYEES

### § 11-1121. Clerk and other personnel.

The judges of the Domestic Relations Branch, with the approval of the chief judge of the District of Columbia Court of General Sessions, may appoint and remove a clerk and such other personnel as may be necessary for the operation of the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-761 (Apr. 11, 1956, ch. 204, § 104, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

### § 11-1122. Duties of clerk regarding docket.

The clerk serving in the Domestic Relations Branch of the District of Columbia Court of General Sessions shall keep a separate docket for the Branch, in which he shall record the steps taken at each stage of actions or proceedings instituted or conducted in the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-764 (Apr. 11, 1956, ch. 204, § 103, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

## SUBCHAPTER III.—JURISDICTION

### § 11-1141. Exclusive jurisdiction.

(a) The Domestic Relations Branch of the District of Columbia Court of General Sessions and each judge sitting therein has exclusive jurisdiction of:

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) applications for revocation of divorce from bed and board;

(3) civil actions to enforce support of minor children;

(4) civil actions to enforce support of wife;

(5) actions seeking custody of minor children;

(6) actions to declare marriages void;

(7) actions to declare marriages valid;

(8) actions for annulments of marriage;

(9) determinations and adjudications of property rights, both real and personal, in any action hereinabove referred to in this section, irrespective of any jurisdictional limitation imposed on the Court of General Sessions;

(10) proceedings in adoption; and

(11) proceedings under the Uniform Reciprocal Enforcement of Support Act, chapter 3 of Title 30.

(b) This chapter does not affect or diminish the jurisdiction of the Juvenile Court of the District of Columbia, or of any judge presiding therein. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88-241, § 1.)

#### JURISDICTION IN CERTAIN DOMESTIC RELATIONS MATTERS

Section 16 of act Dec. 23, 1963, provided as follows:

"Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any action, application or proceeding, as described in section 11-1141 of the Code, filed in the District Court prior to the effective date of section 105 of the act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-762, 11-769 (Apr. 11, 1956, ch. 204, §§ 105, 113, 70 Stat. 112, 113; Sept. 9, 1959, Pub. L. 86-241, 73 Stat. 473; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates sections 11-762 and 11-769 of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11-762 of D.C. Code, 1961 ed., contained an additional paragraph which provided as follows: "Nothing in this chapter [that is, in the act of Apr. 11, 1956, cited above, which established the Domestic Relations Branch of the Municipal Court and vested in it certain jurisdiction which previously had been exercised by the United States District Court for the District of Columbia] shall be construed to divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any such action, application or proceeding filed in such court prior to the effective date of this section to the same extent as if this chapter had not been enacted". That paragraph is transitory and is omitted from this revised section as inappropriate in a code of general and permanent law, but the jurisdiction and power of the District Court so preserved is continued in a separate section of the present bill. The words "effective date of this section", as used in the omitted paragraph, referred to the effective date of section 105 of the act of Apr. 11, 1956, from which section 11-762 of D.C. Code, 1961 ed., was derived. Under section 115 of that act, section 105 thereof was made effective 30 days after the appointment and qualification of the three additional judges for the Municipal Court authorized by section 103(a) thereof. Section



103(a) had, by amending act Oct. 25, 1949, ch. 706, § 1, 63 Stat. 887 (D.C. Code, 1961 ed., § 11-752), increased the number of judges of the Court from 13 to 16, and section 103(b) thereof (D.C. Code, 1951 ed., § 11-760) provided for service of the three additional judges, appointed under the amendment, in the Domestic Relations Branch of the Court. See sections 11-902 and 11-1102 in this revision, and revision notes thereunder.

Item (11), relating to proceedings under the Uniform Reciprocal Enforcement of Support Act, is new to this section, but does not state new law. That act was adopted for the District of Columbia by act July 10, 1957, Pub. L. 85-94, 71 Stat. 285, and the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions) has jurisdiction of proceedings thereunder. Heretofore classified to section 11-1601 et seq. of D.C. Code, 1961 ed., it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology and arrangement.

#### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

##### § 11-1161. Powers of Branch.

The Domestic Relations Branch of the District of Columbia Court of General Sessions has all of the legal and equitable powers necessary to effectuate the purposes of this chapter, chapters 3 and 9 of Title 16, chapters 1 and 3 of Title 30, and section 32-786, including but not limited to, the power to:

- (1) issue restraining orders and injunctions, writs of habeas corpus and ne exeat, and all other writs, orders, and decrees; and
- (2) enforce and execute its judgments, orders, and decrees.

(Dec. 23, 1963, 77 Stat. 493, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-763 (Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from all of section 11-763 of D.C. Code, 1961 ed., except the second sentence of subsec. (b) thereof. That sentence, which related to the legal status of judgments of the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions), is set out elsewhere in this revised part. See tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions of section 11-763 of D.C. Code, 1961 ed., that are rewritten and carried into this section, read as follows:

"(a) The Domestic Relations Branch is hereby vested with so much of the power as is now vested in the United States District Court for the District of Columbia, whether in law or in equity, as is necessary to effectuate the purposes of this chapter [actually, subchapter IIA of chapter 7 of the Code], including but not limited to, the power to issue restraining orders, injunctions, writs of habeas corpus, and ne exeat, and all other writs, orders, and decrees.

"(b) The Domestic Relations Branch shall have the same power to enforce and execute judgments, orders and decrees entered by it as is now vested in the United States District Court for the District of Columbia."

In this section, the provisions are rewritten to eliminate the references to the District Court as superfluous, and, for the purpose of clarification, to insert references to the particular provisions with which the Domestic Relations Branch is concerned, and which had been affected or amended by other provisions of the 1956 act creating the Branch. In this connection, a reference to chapters 1 and 3 of Title 30 is also inserted. Chapter 1 of that title relates to marriages, but, considering section

11-1141 of this revised part, it apparently contains some provisions, such as provisions relating to annulment, which would come within the jurisdiction of the Domestic Relations Branch of the Court of General Sessions. Chapter 3 of that title contains, or will contain, the Uniform Reciprocal Enforcement of Support Act, which was adopted for the District of Columbia in 1957 (see revision note under section 11-1141 of this revised part). Heretofore, it has been classified to section 11-1601 et seq. of D.C. Code, 1961 ed., but it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology.

#### Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF COURT OF GENERAL SESSIONS

##### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.

- 11-1301. Continuation of Branch.
- 11-1302. Service of Court of General Sessions judges—Rotation.
- 11-1303. Sessions.

##### SUBCHAPTER II.—OFFICERS AND EMPLOYEES

- 11-1321. Clerk.
- 11-1322. Separate docket—Entries.
- 11-1323. Records and reports.

##### SUBCHAPTER III.—JURISDICTION

- 11-1341. Exclusive jurisdiction of small claims—Limitations.
- 11-1342. Settlement disputes by arbitration and conciliation.
- 11-1343. Certification of cases by Court of General Sessions judges—Recertification.

##### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

##### § 11-1301. Continuation of Branch.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-801 (Mar. 5, 1938, ch. 43, § 1, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-801 of D.C. Code, 1961 ed., which in 1938 established the Small Claims and Conciliation Branch in the Municipal Court prior to the merger, by the act of Apr. 1, 1942, of that court with the Police Court to form the Municipal Court for the District of Columbia, with the final phrase of subsec. (b) of section 11-756 of the Code, the effect of which was to continue that branch within the second Municipal Court thus formed, and with part of the first sentence of subsec. (a) of section 11-755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Small Claims and Conciliation Branch. For remainder of sections 11-755 and 11-756, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Small Claims and Conciliation Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11-901.



### § 11-1302. Service of Court of General Sessions judges—Rotation.

One or more judges of the District of Columbia Court of General Sessions shall serve in the Small Claims and Conciliation Branch for such periods and in such order of rotation as the chief judge of the court determines. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-803 (Mar. 5, 1938, ch. 43, § 3, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-803 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

With respect to who may determine how many judges shall serve in the Branch, the periods of service, and the order of rotation, "chief judge of the court" is substituted for "judges of the court" to conform with section 11-904 herein (D.C. Code, 1961 ed., § 11-754) under which the chief judge has the duty of assigning judges to the divisions and several branches of the court.

Minor changes are made in phraseology.

### § 11-1303. Sessions.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall also hold at least one night session during each week. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-816 (Mar. 5, 1938, ch. 43, § 16, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-816 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

## SUBCHAPTER II.—OFFICERS AND EMPLOYEES

### § 11-1321. Clerk.

The District of Columbia Court of General Sessions may assign a deputy clerk or other assistant to the clerk of the court to serve as clerk of the Small Claims and Conciliation Branch. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-802 (Mar. 5, 1938, ch. 43, § 2, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-802 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code

are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

The language of this section is new, but the provisions were implicit in clause (c) in section 11-802 of D.C. Code, 1961 ed., which was a section containing definitions of terms used in chapter 8 (§ 11-801 et seq.) of Title 11 of D.C. Code, 1961 ed., in which provisions relating to the Small Claims and Conciliation Branch of the Municipal Court (now, Court of General Sessions) were set out. Clause (c) defined "Clerk" as meaning "the clerk or any assistant clerk of said municipal court assigned to said branch".

The remaining provisions of section 11-802 of D.C. Code, 1961 ed., which defined "Branch", "Judge" and "Court", are omitted, as all provisions of chapter 8 of Title 11 of the Code, to which the definitions related, that are carried into this revised part, are rewritten to render the retention of the definitions unnecessary.

### § 11-1322. Separate docket—Entries.

The clerk of the Small Claims and Conciliation Branch shall keep a separate docket for the Branch, in which he shall record every proceeding and ruling had in each case. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-806 (Mar. 5, 1938, ch. 43, § 6, 52 Stat. 105; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-806 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Changes are made in phraseology.

### § 11-1323. Records and reports.

The clerk of the Small Claims and Conciliation Branch shall maintain a daily record of all transactions had therein and shall prepare and transmit to the Attorney General of the United States a monthly report in detail showing the number and nature of all such transactions. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-813 (Mar. 5, 1938, ch. 43, § 13, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-813 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

## SUBCHAPTER III.—JURISDICTION

### § 11-1341. Exclusive jurisdiction of small claims—Limitations.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions has exclusive jurisdiction over all cases within the jurisdiction of the court in which the amount of the



plaintiff's claim or the claimed value of personal property in controversy does not exceed \$150 exclusive of interest, attorney fees, protest fees, and costs. This jurisdiction does not include actions for recovery of the possession of real estate, whether or not such actions include a claim for arrears of rent, or personalty, or both arrears of rent and personalty. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Sept. 6, 1961, Pub. L. 87-203, § 1, 75 Stat. 471; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (a) of section 11-804 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755, 11-756 and 11-804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions. Changes are made in phraseology.

### § 11-1342. Settlement of disputes by arbitration and conciliation.

In order to effect the speedy settlement of controversies, and with the consent of all parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. The judges of the Branch may also act as referees or arbitrators, either alone or in conjunction with other persons, pursuant to rule 53 of the Federal Rules of Civil Procedure, or under Title 9, United States Code, or otherwise. A judge, officer, or employee of the District of Columbia Court of General Sessions may not accept any fee or compensation in addition to his salary for services performed pursuant to this section. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (b) of section 11-804 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755, 11-756 and 11-804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Reference to sections 16-1701 to 16-1719 of D.C. Code, 1961 ed., is changed to "rule 53 of the Federal Rules of Civil Procedure", as that rule superseded the Code sections cited.

Reference to the "United States Arbitration Act of February 12, 1925 (U.S.C., 1934 ed., Title 9, sections 1 to 15)", is replaced in this revised section by "Title 9, United States Code". Title 9 of the United States Code, which relates solely to arbitration, and which originally represented a classification of the cited 1925 act, was enacted into law by act July 30, 1947, ch. 392, § 1, 61 Stat. 669, and section 2 of the 1947 act repealed the 1925 act. See Title 9 in the United States Code.

Changes are made in phraseology.

### § 11-1343. Certification of cases by Court of General Sessions judges—Recertification.

When the interests of justice seem to require, and all parties consent thereto, a judge of the District of Columbia Court of General Sessions may certify a case to the Small Claims and Conciliation Branch for conciliation, or to endeavor to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties the trial of the case may be completed in the Branch, or in the absence of their consent shall be recertified to another judge of the court for trial. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-810 (Mar. 5, 1938, ch. 43, § 10, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-810 of D.C. Code, 1961 ed. Sections 11-751a, 11-755 and 11-756 of the Code are also cited, as sources of this section for the reasons stated in revision note under section 11-1301. For remainder of sections 11-755 and 11-756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

## Chapter 15.—JUVENILE COURT OF THE DISTRICT OF COLUMBIA

### SUBCHAPTER I.—CONTINUATION AND ORGANIZATION Sec.

- 11-1501. Continuation of court—Court of record—Seal.
- 11-1502. Appointment, qualifications, tenure, salaries, and oath of judges.
- 11-1503. Administration of court—Absence, disability, disqualification, or death of judges.
- 11-1504. Terms.

### SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

- 11-1521. Clerk—Compensation, bond, oath, and duties.
- 11-1522. Administration of oaths by clerk.
- 11-1523. Director of Social Work—Compensation—Qualifications—Duties.
- 11-1524. Supervisor of Probation and other probation officers — Compensation — Qualifications — Duties of Probation Department and Officers.
- 11-1525. Other Court employees.
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### SUBCHAPTER III.—JURISDICTION

- 11-1551. Jurisdiction of children and minors—Retention.
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- 11-1581. Contempt powers.
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- 11-1586. Records—Limited inspection—Penalties for unlawful disclosure or use.
- 11-1587. Audit of accounts.
- 11-1588. Court quarters.
- 11-1589. Quarterly reports.

## SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

### § 11-1501. Continuation of Court—Court of record—Seal.

(a) The Juvenile Court of the District of Columbia shall continue as a court of record in the District.

(b) The Court shall have a seal. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88-241, § 1.)

#### REFERENCE TO JUDGE OF JUVENILE COURT IN OTHER LAWS

Section 17(c) of act Dec. 23, 1963, provided as follows: "Whenever in any law of the United States reference is made to the judge of the juvenile court of the District of Columbia the reference shall be construed to mean any judge of the court."

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-901, 11-904 (Mar. 19, 1906, ch. 960, §§ 1, 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates section 11-901 of D.C. Code, 1961 ed., and that part of section 11-904 thereof which provided that the Juvenile Court should be a court of record and should have a seal.

This section, as revised, continues the Juvenile Court established by section 11-901 of D.C. Code, 1961 ed.

The remainder of section 11-904 is carried into § 11-1582.

### § 11-1502. Appointment, qualifications, tenure, salaries, and oath of judges.

(a) The Juvenile Court shall consist of a chief judge and two associate judges learned in the law and appointed by the President of the United States by and with the advice and consent of the Senate.

(b) A person may not be appointed as judge of the court, unless:

(1) he has been a member of the bar of the District of Columbia for a period of five years preceding his appointment;

(2) during a period of ten years immediately preceding his appointment, he has been a resident of the District of Columbia or of the metropolitan area of the District for at least five years, of which not less than three years shall immediately precede his appointment; and

(3) he has a broad knowledge of social problems and procedures and an understanding of child psychology.

For the purpose of this subsection, the term "metropolitan area of the District" means Montgomery and Prince Georges Counties in Maryland, and Arlington and Fairfax Counties and the cities of Alexandria and Falls Church in Virginia.

(c) Each judge appointed after March 9, 1962, shall serve for a term of ten years or until his successor is appointed and qualifies.

(d) The salary of the chief judge shall be equal to the salary of the chief judge of the District of Columbia Court of General Sessions, and the salary of each associate judge shall be equal to the salary of an associate judge of that court.

(e) Each judge, before entering upon the duties of his office, shall take the oath prescribed for judges of courts of the United States. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-920 (Mar. 19, 1906, ch. 960, § 19, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596

(601); July 11, 1955, ch. 302, § 4, 69 Stat. 290, Mar. 9, 1962, Pub. L. 87-413, § 1, 76 Stat. 21; Aug. 24, 1962, Pub. L. 87-596, § 2(b), 76 Stat. 398).

Section is derived from all of section 11-920 of D.C. Code, 1961 ed., except the first and second sentences of subsec. (c) thereof. Those sentences are carried into section 11-1503 herein.

Changes are made in phraseology and arrangement.

### § 11-1503. Administration of court—Absence, disability, disqualification, or death of judges.

(a) The chief judge of the Juvenile Court shall be responsible for the administration of the court. During the temporary absence or disability of the chief judge, the associate judge of the court designated by the chief judge or acting chief judge of the United States District Court for the District of Columbia shall be responsible for the administration of the court.

(b) Except as provided by subsection (a) of this section, when a judge of the Juvenile Court dies, or is absent, ill, or disabled to serve in any case, the chief judge or acting chief judge of the United States District Court for the District of Columbia shall designate one of the judges of the District of Columbia Court of General Sessions to serve as a judge of the Juvenile Court until the vacancy is filled or until the removal of such disability, and the return of the regular judge of that court. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-920, 11-921 (Mar. 19, 1906, ch. 960, §§ 19, 20, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (601); July 11, 1955, ch. 302, § 4, 69 Stat. 290; Mar. 9, 1962, Pub. L. 87-413, §§ 1, 3(a), 76 Stat. 21, 22; Aug. 24, 1962, Pub. L. 87-596, § 2(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates the first and second sentences of subsec. (c) of section 11-920 of D.C. Code, 1961 ed., with section 11-921 of the Code. Remainder of section 11-920 is carried into section 11-1502 herein.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. See subsec. (b) of this revised section.

The exception clause is inserted at the beginning of subsec. (b) for the purpose of clarification.

Changes are made in phraseology.

### § 11-1504. Terms.

The Juvenile Court shall hold a term on the first Monday of every month and continue the term from day to day as long as may be necessary for the transaction of its business. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-905 (Mar. 19, 1906, ch. 960, § 4, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596). Minor changes are made in phraseology.

## SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

### § 11-1521. Clerk—Compensation, bond, oath, and duties.

(a) The Juvenile Court shall appoint from the eligible list of the Civil Service Commission, a clerk of the court, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.



(b) The clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of the United States district courts.

(c) The clerk shall:

(1) keep accurate and complete accounts of moneys collected from persons under the supervision of the probation department, give receipts therefor, and make reports thereon as the chief judge directs; and

(2) perform other duties and keep other records as prescribed by the chief judge.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-922, 11-925 (Mar. 19, 1906, ch. 960, §§ 21, 24, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87-413, §§ 3(c), 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates that part of section 11-922 of D.C. Code, 1961 ed., relating to appointment and compensation of the clerk of the Juvenile Court, with that part of section 11-925 of the Code relating to bond and oath of the clerk and his general duties. For remainder of sections 11-922 and 11-925, see tables.

Changes are made in phraseology.

#### § 11-1522. Administration of oaths by clerk.

The clerk of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-925 (Mar. 19, 1906, ch. 960, § 24, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Section is derived from that part of section 11-925 of D.C. Code, 1961 ed., which authorized the clerk of the Juvenile Court to administer oaths and affirmations.

Changes are made in phraseology.

#### § 11-1523. Director of Social Work—Compensation—Qualifications—Duties.

(a) The Juvenile Court shall appoint, from the eligible list of the Civil Service Commission, a Director of Social Work, and shall fix his compensation in accordance with the Classification Act of 1949, as amended. The Director must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

(b) Under the administrative direction of the chief judge, the Director of Social Work shall:

(1) have charge of all the social work of the court; and

(2) in association with other social agencies of the District of Columbia, study sources and causes of delinquency and assist in developing and correlating community-wide plans for the prevention and treatment of delinquency.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-922, 11-923 (Mar. 19, 1906, ch. 960, §§ 21, 22, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87-413, §§ 3(c) and (b), 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates part of section 11-922 of D.C. Code, 1961 ed., with section 11-923 thereof. For remainder of section 11-922, see tables.

Changes are made in phraseology.

#### CROSS REFERENCES

Advances to chief probation officer of juvenile court, see § 47-116.

Probation department, see § 24-101 et seq.

#### § 11-1524. Supervisor of Probation and other probation officers—Compensation—Qualifications—Duties of Probation Department and officers.

(a) The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, a Supervisor of Probation and such other probation officers as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Supervisor of Probation and probation officers must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

(b) Under the direction of the Director of Social Work, the Supervisor of Probation shall organize, direct, and develop the work of the Probation Department of the court.

(c) The Probation Department shall:

(1) make such investigations as the court directs;

(2) keep written records of investigations and submit them to a judge of the court or deal with them as he directs;

(3) use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition; and

(4) keep informed concerning the conduct and condition of each person under its supervision and report thereon to the court as it directs, and the Department shall keep full records of its work.

(d) For the purposes of this chapter, probation officers have the powers of police officers, and have such duties, as may be assigned to them in the course of performing the functions of the Probation Department. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-922, 11-924 (Mar. 19, 1906, ch. 960, §§ 21, 23, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87-413, § 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates part of section 11-922 of D.C. Code, 1961 ed., with section 11-924 thereof. For remainder of section 11-922, see tables.

Changes are made in phraseology.

#### § 11-1525. Other court employees.

The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, such other employees of the court as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. Employees appointed pursuant to this section must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-922 (Mar. 19, 1906, ch. 960, § 21, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87-413, § 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section is derived from part of section 11-922 of D.C. Code, 1961 ed.

The provision for appointment of a deputy clerk is omitted as unnecessary and covered by the general provisions carried into this section.

Changes are made in phraseology.

For remainder of section 11-922 of D.C. Code, 1961 ed., see tables.

### § 11-1526. Rules governing conduct of personnel.

The Juvenile Court may issue all necessary orders and writs in aid of its jurisdiction as prescribed by law, and may adopt and publish rules governing its procedure and the conduct of its officers and employees. The rules shall be enforced and construed beneficially for the remedial purposes of this chapter and chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Section is derived from that part of section 11-930 of D.C. Code, 1961 ed., following the semicolon therein, which related to the formulation of rules, by the Juvenile Court for the conduct of its officers and employees.

Changes are made in phraseology.

For remainder of section 11-930 of D.C. Code, 1961 ed., see tables.

## SUBCHAPTER III.—JURISDICTION

### § 11-1551. Jurisdiction of children and minors—Retention.

(a) Except as herein otherwise provided, the Juvenile Court has original and exclusive jurisdiction of all cases and in proceedings:

(1) concerning a child as defined by section 16-2301:

(A) who has violated a law, or has violated an ordinance or regulation of the District of Columbia;

(B) who is habitually beyond the control of his parent, guardian, or custodian;

(C) who is habitually truant from school or home;

(D) who habitually so deports himself as to injure or endanger himself or the morals or safety of himself or others;

(E) who is abandoned by his parent, guardian, or custodian;

(F) who is homeless or without adequate parental support or care, or whose parents, guardian, or custodian neglects or refuses to provide support and care necessary for his health or welfare;

(G) whose parent, guardian, or custodian neglects or refuses to provide or avail himself of the special care made necessary by his mental condition;

(H) who associates with vagrants, or vicious or immoral persons;

(I) who engages in an occupation, or is in a situation, dangerous to life or limb or injurious to the health or morals of himself or others;

(2) subject to applicable statutes of limitation, concerning a minor 18 years of age or older who is charged with:

(A) having violated any law; or

(B) having violated any ordinance or regulation of the District of Columbia—

prior to his having become 18 years of age; and

(3) to determine the custody or guardianship of the person of a child coming within the provisions of this section and subchapter I of chapter 23 of Title 16; but the provisions of this clause do not deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when the custody is incidental to the determination of causes pending therein.

(b) When jurisdiction is obtained by the Juvenile Court in the case of a child under 18 years of age at the time of the offense, the child shall continue under the jurisdiction of the court until he becomes 21 years of age unless the court discharges him prior thereto. This subsection does not affect the jurisdiction of other courts over offenses committed by the child after he reaches the age of 18 years. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-906, 11-907 (Mar. 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735).

Section consolidates parts of sections 11-906 and 11-907 of D.C. Code, 1961 ed.

Section 11-906 of D.C. Code, 1961 ed., provided that chapter 9 of Title 11 thereof (which was the chapter dealing with the Juvenile Court) should apply to any person under the age of 18 years who committed any of the acts, or was in any of the conditions or circumstances enumerated in that section, and then, among other definitions, defined "child", as used in that chapter, as meaning a person under the age of 18 years. Section 11-907 of the Code then merely provided in par. (a) of subsec. 1 thereof that the Juvenile Court had original and exclusive jurisdiction of all cases and in proceedings "Concerning any child coming within the terms and provisions of this chapter". Inasmuch as the enumeration in section 11-906 stated the conditions and circumstances under which the court has jurisdiction, the provisions of the two sections, as consolidated in subsec. (a) of this section, are set out in jurisdictional language only, and thus state in one place the jurisdiction of the Court over the matters described.

In clause (2) of subsec. (a), words "minor 18 years of age or older" are substituted for "person under 21 years of age" for the purpose of clarification.

In subsec. (b), words "at the time of the offense" are inserted, on recommendation of the Judge of the Juvenile Court, after "under 18 years of age", to make it clearer that any person who came under the court's jurisdiction could be continued under that jurisdiction until his 21st birthday.

Subsec. (c) of section 11-907 of D.C. Code, 1961 ed., which vested in the Juvenile Court jurisdiction of proceedings to determine the paternity of children born out of wedlock and to provide for the support of such children, and which provided for jury trial in the proceedings or the waiver thereof, is omitted as superseded and covered by sections 11-951 et seq. of D.C. Code, 1961 ed. For provisions of those sections, as carried into other sections herein, and for remainder of sections 11-906 and 11-907, see tables.

Changes are made in phraseology.

#### CROSS REFERENCES

Commitments as feeble-minded person, see § 32-620.

Designation of officers to take bonds and collateral, see § 23-610.

Enforcement of laws for compulsory school attendance, see § 31-213.

Enforcement of laws governing professional bondsmen, see § 23-612.

Jurisdiction of prosecutions for nonsupport of wife and minor children, see § 22-903.



**§ 11-1552. Transfer from other courts.**

When during the pendency of a criminal or quasi-criminal charge against a person under 21 years of age, in another court, it is ascertained that the person was under the age of 18 years at the time of the alleged offense, the court shall forthwith transfer the case, together with all the papers, documents, and testimony connected therewith, to the Juvenile Court. The court making the transfer shall order the minor to be taken forthwith to the place of detention designated by the Juvenile Court or to that court itself, or release the minor to the custody of a suitable person to appear before the Juvenile Court at a time designated. The Juvenile Court shall thereupon proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-913 (Mar. 19, 1906, ch. 960, § 12, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599)).

Changes are made in phraseology.

**§ 11-1553. Waiver of jurisdiction in case of felony and transfer of case.**

When a child 16 years of age or over is charged with an offense which if committed by a person 18 years of age or over is a felony, or when a child under 18 years of age is charged with an offense which if committed by a person 18 years of age or over is punishable by death or life imprisonment, a judge may, after full investigation, waive jurisdiction and order the child held for trial under the regular procedure of the court which would have jurisdiction of the offense if committed by a person 18 years of age or over; or the other court may exercise the powers conferred upon the Juvenile Court by this chapter and subchapter I of chapter 23 of Title 16 in conducting and disposing of such cases. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-906, 11-914 (Mar. 19, 1906, ch. 960, §§ 5, 13, 34 Stat. 73, 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); May 15, 1947, ch. 56, 61 Stat. 92; Mar. 9, 1962, Pub. L. 87-413, § 3 (d), 76 Stat. 22).

Section consolidates section 11-914 of D.C. Code, 1961 ed., with part of section 11-906 thereof. For remainder of section 11-906, see tables.

By substituting "person 18 years of age or over" for "adult", and "child under 18 years of age" for "child", it is not necessary to retain the definitions of "adult" and "child" which were contained in subsec. (b) of section 11-906 of D.C. Code, 1961 ed. See revision not under section 11-1551 herein.

Changes are made in phraseology.

**§ 11-1554. Jurisdiction of persons 18 years of age or over.**

The Juvenile Court has original and exclusive jurisdiction to determine cases of persons 18 years of age or over charged with willfully contributing to, encouraging, or tending to cause by any act or omission, a condition which would bring a child under the age of 18 years within the provisions of section 11-1551. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-906, 11-907 (Mar. 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52

Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).

Section consolidates part of section 11-906 of D.C. Code, 1961 ed., with the first sentence of subsec. 2 of section 11-907 of the Code. For remainder of sections 11-906 and 11-907, see tables.

By substituting "persons 18 years of age or over" for "adults", and "child under the age of 18 years" for "child", it is unnecessary to retain the definitions of the terms "adult" and "child" which were contained in section 11-906(b) of D.C. Code, 1961 ed. See revision note under section 11-1551 herein.

Changes are made in phraseology.

**§ 11-1555. Jurisdiction of paternity proceedings.**

The Juvenile Court has original and exclusive jurisdiction of proceedings to determine paternity of any child alleged to have been born out of wedlock and to provide for his support in the manner provided by subchapter II of chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is derived from the first sentence of section 11-951 of D.C. Code, 1961 ed. For remainder of section 11-951, see tables.

Changes are made in phraseology.

**§ 11-1556. Concurrent jurisdiction of desertion and nonsupport cases.**

The Juvenile Court has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of all cases arising under sections 22-903 to 22-905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 11-907, 11-961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 308, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 13, 64 Stat. 1240, 1242).

Section consolidates the second sentence of subsec. 2 of section 11-907, and the first part of subsec. (a) of section 11-961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the Juvenile Court, concurrently with the District Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11-523 herein. For remainder of sections 11-907 and 11-961, see tables.

The reference in section 11-907 of D.C. Code, 1961 ed., to sections "22-902 to 22-905" is changed to sections "22-903 to 22-905", on recommendation of the Judge of the Juvenile Court, and to conform with the legislative intent. See revision note under section 11-523 herein.

Changes are made in phraseology.

**§ 11-1557. Construction of chapter with respect to other jurisdiction.**

This chapter does not limit the jurisdiction vested in the Juvenile Court:

(1) by section 31-213, with respect to cases arising under sections 31-201 to 31-212 relating to compulsory school attendance and work permits;

(2) by section 36-228, with respect to cases arising under sections 36-201 to 36-227, relating to child labor and work permits; c

(3) by any other provision of law.

(Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-907 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).



Section is derived from the third (final) sentence of subsec. 2 of section 11-907 of D.C. Code, 1961 ed. For remainder of section 11-907, see tables.

For the purpose of clarification, words describing the subjects to which sections 31-201 to 31-212, and 36-201 to 36-227 (referred to in the text), relate, are inserted.

The provisions of section 11-907 of D.C. Code, 1961 ed., carried into this section, indicating that the jurisdiction of the Juvenile Court in cases arising under sections 31-201 to 31-213 of the Code, relating to compulsory school attendance and work permits, is concurrent with that of the District Court, are omitted. Section 31-213, conferring jurisdiction on the Court in such matters, and act July 2, 1940, ch. 525, 54 Stat. 735, inserting in section 11-907 the saving clause with respect to such jurisdiction, do not provide for concurrent jurisdiction of the District Court.

Words "or vested in the Juvenile Court by any other provision of law" are added at the end to make it clear that any other jurisdiction, that may be conferred on the Juvenile Court by laws not included in this chapter, is not limited by the provisions of this chapter.

Changes are made in phraseology.

#### SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

##### § 11-1581. Contempt powers.

The Juvenile Court may punish, as a contempt, a willful violation, neglect, or disobedience of its orders by a fine not exceeding \$200 or imprisonment not exceeding six months, or by both. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-933 (Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

##### § 11-1582. Administration of oaths and affirmations.

The judges or acting judges of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-904 (Mar. 19, 1906, ch. 960, § 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596, Mar. 9, 1962, Pub. L. 87-413, § 3(b), 76 Stat. 22).

Section is derived from that part of section 11-904 of D.C. Code, 1961 ed., which empowered the judge or acting judge of the Juvenile Court to administer oaths and affirmations. For remainder of section 11-904, see tables.

Changes are made in phraseology.

##### § 11-1583. Duties of Corporation Counsel.

(a) The Corporation Counsel of the District of Columbia or any of his assistants shall:

(1) upon request, assist the Juvenile Court in hearings arising under section 11-1551;

(2) institute and prosecute proceedings and cases arising under section 11-1555 and subchapter II of chapter 23 of Title 16, relating to the establishment of paternity and provision for support of children born out of wedlock; and

(3) prosecute cases arising under sections 11-1554 and 11-1556 and the sections specified by section 11-1557, in which a person 18 years of age or over is charged with an offense.

(b) As used in this section, "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this section. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-906, 11-932, 11-951 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 55-1029, June 6, 1955, as amended Reorg. Ord. Nos. 56-320, Feb. 10, 1956; 56-1776, Aug. 30, 1956; 56-2102, Oct. 18, 1956.

Section consolidates section 11-932 of D.C. Code, 1961 ed., with part of subsec. (b) of section 11-906, and part of the second sentence of section 11-951, of the Code. The same provision, and other provisions, of section 11-951 are also carried into chapter 23 of Title 16. For remainder of sections 11-906 and 11-951, see tables.

For the purpose of clarification, and on recommendation of the Judge of the Juvenile Court, words "arising under section 11-1551" are substituted for words in section 11-932 of D.C. Code, 1961 ed., "to determine delinquency, dependency, or neglect" in subsec. (a) (1) herein.

Also for the purpose of clarification, words "arising under sections 11-1554 and 11-1556 and the sections referred to in section 11-1557" are substituted for words in section 11-932 of D.C. Code, 1961 ed., "within the jurisdiction of the court".

Words "person 18 years of age or over" are substituted in subsec. (a) (3) for "adult" (as used in section 11-932 of D.C. Code, 1961 ed.), and therefore it is not necessary to retain the definition of "adult" which was contained in section 11-906 thereof.

Subsec. (b), which follows language recommended by the Corporation Counsel of the District, is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That plan abolished a number of offices and agencies in the District, including the Office of the Corporation Counsel, transferred their function to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the former Office of the Corporation Counsel, established a new Office of the Corporation Counsel, and abolished the former office, by Reorganization Order No. 50, June 26, 1953, as amended, which was repealed and replaced by Reorganization Order No. 55-1029, June 6, 1955, as amended by the later reorganization orders cited in the first paragraph of this note. Reorganization Order No. 55-1029, as so amended, continued the Office of the Corporation Counsel established by Reorganization Order No. 50, as amended. Under those orders, the Board transferred to that office functions previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above. Although, technically, the ultimate responsibility to perform the functions transferred to the present Office of the Corporation Counsel is now in the Board of Commissioners, the District of Columbia, since it must, as pointed out in letter of June 25, 1959, receive from the Corporation Counsel, citing the case of *Ex parte Garland* (1866) 71 U.S. 333, 378, 18 L. Ed. 366, 370, "be represented by one who is legally authorized to perform the functions of an attorney at law, it necessarily follows that representation by any officer or agency is not lawful unless the representative be a member of the Bar of the United States District Court for the District of Columbia and authorized to practice law before the courts of the District of Columbia".

Changes are made in phraseology.

##### § 11-1584. Assistance and co-operation of officers, departments, institutions, and others.

Every officer and department of the District of Columbia is required to render all assistance and co-operation within his or its jurisdictional power which may further the objects of this chapter and subchapter I of chapter 23 of Title 16. Institutions or agencies to which the Juvenile Court sends a



child are required to give to the court or to any officer appointed by it such information or reports concerning the child as the court or officer requires. The court may seek the co-operation of societies or organizations having for their object the protection or aid of children. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-931 (Mar. 19, 1906, ch. 960, § 30, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

#### § 11-1585. Payment of fines, costs, etc., to clerk—Deposit—Accounting.

Fines, penalties, costs, and forfeitures imposed or taxed by the Juvenile Court shall be paid to the clerk of courts, either with or without process, or on process ordered by the court. The clerk of the court shall, on the first secular day of each week, deposit with the Board of Commissioners or its authorized representative the total amount of all fines, penalties, costs, and forfeitures collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit to the Board or its authorized representative. (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-939 (Mar. 19, 1906, ch. 960, § 39, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Reference to the collector of taxes is changed to "Board of Commissioners or its authorized representative", and reference to the auditor of the District of Columbia is changed to "Board or its authorized representative", for the same reasons stated in revision note under section 11-983 herein.

Changes are made in phraseology.

#### § 11-1586. Records—Limited inspection—Penalties for unlawful disclosure or use.

(a) The Juvenile Court shall maintain records of all cases brought before the court pursuant to subchapter I of chapter 23 of Title 16. The records shall be withheld from indiscriminate public inspection but shall be open to inspection only by respondents, their parents or guardians and their duly authorized attorneys, and by the institution or agency to which the respondent under 18 years of age may have been committed pursuant to sections 16-2307 and 16-2308.

Pursuant to rule or special order of the court, other interested persons, institutions, and agencies may inspect the records. As used in this subsection, "records" includes:

- (1) notices filed with the court by arresting officers pursuant to section 16-2306;
- (2) the docket of the court and entries therein;
- (3) the petitions, complaints, informations, motions, and other papers filed in a case;
- (4) transcripts of testimony taken in a case tried by the Court;
- (5) findings, verdicts, judgments, orders and decrees; and
- (6) other writings filed in proceedings before the court, other than social records.

(b) The records or parts thereof made by officers of the court pursuant to sections 11-1525 and 16-2302, referred to in subsection (a) of this section as social records, shall be withheld from indiscriminate public inspection, except that they shall be made available by rule or special order of court to such persons, governmental and private agencies, and institutions as have a legitimate interest in the protection, welfare, treatment, and rehabilitation of the child under 18 years of age, and to any court before which the child may appear. The court may also provide by rule or a judge may provide by special order that any such person or agency may make or receive copies of the records or parts thereof. Persons, agencies, or institutions receiving records or information pursuant to this subsection may not publish or use them for any purpose other than that for which they were received.

(c) Whoever, except for the purposes permitted and in the manner provided by subsections (a) and (b) of this section, discloses, receives, or makes use of, or authorizes, knowingly permits, participates in, or acquiesces in, the use of information concerning a juvenile before the court, directly or indirectly derived from the records, papers, files, or communications of the court, or acquired in the course of official duties, upon conviction thereof, shall be guilty of a misdemeanor, and shall be fined not more than \$100 or imprisoned not more than ninety days, or both.

(d) Prosecutions pursuant to subsection (c) of this section shall be brought in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants. As used in this subsection, "Corporation Counsel" has the same meaning as that prescribed by section 11-1583(b).

(e) Except on order of the court, the records or proceedings in a case arising under subchapter II of chapter 23 of Title 16 may not be open to inspection by anyone other than the defendant or counsel of record. The court, upon proper showing, may authorize the clerk to furnish certified copies of the records or portions thereof to the defendant, the mother, or custodian of the child, a party in interest, or their duly authorized attorneys. The clerk may furnish certified copies of the records or portions thereof, upon request, to the United States attorney for the District of Columbia for use as evidence in nonsupport proceedings as provided by sections 11-523, 11-1556, 16-2355, and 16-2381 and to the Director of Public Health as provided by section 16-2354(a). (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-929, 11-965 (Mar. 19, 1906, ch. 960, § 28, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 17, 64 Stat. 1243; June 12, 1952, ch. 417, § 3, 66 Stat. 134; Mar. 9, 1962, Pub. L. 87-413, § 3(f), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates sections 11-929 and 11-965 of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.



In subsec. (d), the second sentence is added. See subsec. (b) of section 11-1583 herein, and revision note under section 11-1583.

In subsec. (e), which is from section 11-965 of D.C. Code, 1961 ed., "Director of Public Health" is substituted for "Bureau of Vital Statistics". See section 16-2341 and revision note thereunder.

Changes are made in phraseology.

#### § 11-1587. Audit of accounts.

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the Juvenile Court at the end of every quarter, and in the performance of this duty shall have free access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-940 (Mar. 19, 1906, ch. 960, § 40, as added June 1, 1938, ch. 309, 52 Stat. 596 (605)).

The reference "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor of the District of Columbia", and words "and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of the said substitution. See revision note under section 11-983 herein.

Changes are made in phraseology.

#### § 11-1588. Court quarters.

The Board of Commissioners of the District of Columbia shall provide suitable quarters for the hearing of cases by the Juvenile Court, and for the use of the judges and the probation department and employees of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-928 (Mar. 19, 1906, ch. 960, § 27, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 9, 1962, Pub. L. 87-413, § 3(b), 76 Stat. 22).

Changes are made in phraseology.

#### § 11-1589. Quarterly reports.

The chief judge or the acting chief judge of the Juvenile Court shall submit to the Attorney General of the United States and to the President of the Board of Commissioners of the District of Columbia a detailed quarterly report of the work of the court within thirty days of the end of the quarter, to include the number of juvenile and adult cases heard, the number of juvenile and adult cases calendered, the number of juvenile and adult complaints filed, the number of juvenile cases closed without court hearing, moneys collected for fines and support of legitimate and illegitimate family members, and such other information as may reflect the court's operation and volume of work. A copy of the report shall be kept in the office of the clerk of the court and be subject to public inspection during the regular business hours of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-942-1 (Mar. 1906, ch. 960, § 45, as added Mar. 9, 1962, Pub. L. 87-413, § 5, 76 Stat. 22).

Minor changes are made in phraseology.

### Chapter 17.—MISCELLANEOUS PROVISIONS RELATING TO COURTS AND JUDGES

#### Sec.

11-1701. Retirement, resignation, or non-reappointment of judges—Recall.

#### § 11-1701. Retirement, resignation, and non-reappointment of judges—Recall.

(a) A judge of the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia who, after having served as a judge of the court for a period or periods aggregating twenty years or more, whether continuously or not, retires, resigns, or fails of reappointment upon the expiration of his term of office, shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of his salary at the date of his retirement, resignation, or failure of reappointment upon the expiration of his term of office as the total of his aggregate years of service bears to the period of thirty years, to be paid in the same manner as his salary. The sum so received by him may not exceed his salary at the date his service ceases.

(b) In computing the years of service pursuant to this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, as constituted prior to July 1, 1942, or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963, shall be included whether or not the service is continuous.

(c) A judge receiving retirement salary pursuant to this section may be called upon by the chief judge of the District of Columbia Court of Appeals or the chief judge of the District of Columbia Court of General Sessions to perform such judicial duties as may be requested of him in either of those courts, or in the Juvenile Court of the District of Columbia; but a retired judge shall not be required to render service for more than ninety days in a calendar year after retirement. In case of illness or disability precluding the rendering of service the retired judge shall be fully relieved of service during his illness or disability. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-771a, 41-776 (Apr. 1, 1942, ch. 207, § 11, 56 Stat. 197; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision in section 11-776 of D.C. Code, 1961 ed., defining "retire" and "retirement" as meaning and including "retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent" is omitted as unnecessary and covered by the other provisions as reworded in this revised section.

In subsec. (b) of this revised section, words "as constituted prior to July 1, 1942" are substituted for "as heretofore constituted". Section 11-776 of D.C. Code, 1961 ed.,



from which this section is derived, was enacted on Apr. 1, 1942 (ch. 207, § 11, 56 Stat. 197), and under section 14 of that act, section 11-776 became effective July 1, 1942 (3 months after Apr. 1, 1942).

Also in subsec. (b), words "or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963" are inserted for the purpose of completeness. Jan. 1, 1963, was the effective date of the act of Oct. 23, 1962, which changed the names of those two courts to District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively.

Changes are made in phraseology and arrangement.

## Chapter 19.—CORONER

Sec.

- 11-1901. Definition.
- 11-1902. Inquests—exceptions—jury.
- 11-1903. Witnesses—attachment—contempt.
- 11-1904. Testimony reduced to writing in certain cases—recognizances—returns.
- 11-1905. Monthly reports of inquests—delivery of property.
- 11-1906. Fees of witnesses and jurors—allowances.

### § 11-1901. Definition.

As used in this chapter, "coroner" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to perform the functions prescribed by this chapter. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Section is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. Under that Plan, a number of agencies and offices, including the Office of the Coroner, were abolished and their functions transferred to the Board of Commissioners, and among other things, the Board was authorized to perform the transferred functions or create new offices and agencies and delegate functions to them. The Board's Reorganization Order No. 1, C.O. 302, 853/11, July 1, 1952, temporarily redelegated the transferred functions to the agencies and offices from which they had been transferred by Presidential Reorganization Plan No. 5. The Board's Reorganization Order No. 51, G.F. No. 6-030, June 29, 1953, effective for the most part on Aug. 15, 1953, again abolished the Office of the Coroner, and created another office with the same designation, under the direction and control of a Commissioner. Among other things, that Order provides that the office so created "shall perform such functions as are now or as may be assigned by provisions of the District of Columbia Code", and, except for the laboratory functions performed by the former office (which were transferred to the Department of Public Health), it transferred to the new office all functions and positions, including all duties, powers, and authorities, of officers and employees of the former office.

However, under Presidential Reorganization Plan No. 5, it would seem that the ultimate responsibility for the performance of the functions delegated to the present coroner by Reorganization Order No. 51 is in the Board of Commissioners, and that the Board is empowered to change the present organization at any time, and, if it so desires, to change the designation of "coroner". Therefore, the purpose of this section is to recognize the ultimate responsibility of the Board to perform the functions and to provide for such a change, should it occur.

### § 11-1902. Inquests—Exceptions—Jury.

(a) Except as provided by subsection (b) of this section, the coroner shall hold an inquest over the body of each person found dead in the District when the manner and cause of death is not already known as accidental or in the course of nature.

(b) The coroner may not summon or hold a jury of inquest over the body of a deceased person where

it is known that the deceased came to his death by suicide, accident, mischance, or natural causes; except that where it is not known that the deceased came to his death by suicide the coroner may summon a jury.

(c) A coroner's jury shall consist of six persons. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1203, 11-1204, 11-1206 (Mar. 3, 1901, ch. 854, §§ 192, 193, 195, 31 Stat. 1221; Mar. 2, 1911, ch. 192, 36 Stat. 192; June 26, 1912, ch. 182, § 1, 37 Stat. 147).

Section consolidates part of section 11-1203 of D.C. Code, 1961 ed., with sections 11-1204 and 11-1206 thereof. For remainder of section 11-1203, see section 11-1905 herein.

Changes are made in phraseology.

#### CROSS REFERENCES

Countersigning permit to cremate or otherwise destroy human body, see § 27-125.

Duties of coroner in cases of negligent homicide by operation of motor vehicles, see § 40-606.

Permit to disinter human bodies, see § 27-128.

### § 11-1903. Witnesses—Attachment—Contempt.

The coroner may summon witnesses from any part of the District to appear before him for the purposes of giving evidence, and may compel their attendance by attachment. He may punish for disobedience of a lawful order, or for a contempt committed in his presence, by a fine of not more than \$50 or imprisonment of not more than 30 days. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623).

Section is derived from the first sentence of section 11-1205 of D.C. Code, 1961 ed., which provided as follows: "Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like manner as if the summons had been issued by the municipal court". The municipal court referred to in the quoted words was the municipal court prior to its merger in 1942 with the police court to form the second Municipal Court, the name of which has since been changed, by act Oct. 23, 1962, Pub. L. 87-873, 76 Stat. 1171, to the District of Columbia Court of General Sessions. Section 11-740 empowered the former municipal court to compel the attendance of witnesses from any part of the District by attachment and to punish them for disobedience, and for disorder or contempt committed in its presence, by fine not exceeding ten dollars or imprisonment not exceeding 10 days. These maximum punishments can be traced back to the act of May 17, 1848, ch. 42, § 14, 9 Stat. 229, empowering the justices of the peace to compel the attendance of witnesses by attachment and to punish them for refusing obedience to a summons. The provisions were carried into the Revised Statutes of the District of Columbia as section 1005. When they were later carried into the Code of 1901 (Mar. 3, 1901, ch. 854, § 25, 31 Stat. 1193; D.C. Code, 1961 ed., § 11-740), the maximum punishments remained the same, but the other provisions were expanded to read as stated above, except that they referred to justices of the peace rather than the municipal court. The justice of the peace courts became the municipal court under the act of Feb. 17, 1909, ch. 134, 35 Stat. 623.

Section 11-756(c) of D.C. Code, 1961 ed., which related to the second Municipal Court, and, since the enactment of the above-mentioned act of Oct. 23, 1962, to the District of Columbia Court of General Sessions, contained provisions substantially similar to those of section 11-740 thereof, except that the maximum punishments were \$50 fine or 30-day imprisonment, and presumably these are the maximum punishments to which a party would



now be liable for refusal to obey a summons of the coroner or other contempt before him. Therefor, the provisions of section 11-1205 of D.C. Code, 1961, ed., as herein revised, conform with the provisions of section 11-756(c) thereof. The latter provisions are carried into section 11-981 of this revised part.

For remainder of section 11-1205 of D.C. Code, 1961 ed., see section 11-1904 herein.

#### § 11-1904. Testimony reduced to writing in certain cases—Recognizances—Returns.

Upon an inquisition taken before the coroner, where a person is charged with having unlawfully caused the death of the person on whom the inquest is held, the coroner shall:

(1) reduce the testimony of the witnesses to writing; and

(2) if the jury find that murder or manslaughter has been committed on the deceased, require such witnesses as he deems proper to give a recognizance to appear and testify in the United States District Court for the District of Columbia; and

(3) return to the United States District Court the inquisition and testimony and recognizance taken by him.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is derived from second sentence of section 11-1205 of D.C. Code, 1961 ed. For remainder of section 11-1205, see section 11-1903 herein.

Changes are made in phraseology and arrangement.

#### § 11-1905. Monthly reports of inquests—Delivery of property.

The coroner shall:

(1) make a monthly report to the Board of Commissioners of the District of all inquests held by him during the immediately preceding month, with a description as far as may be of the age, sex, color, and nationality of deceased persons and the causes of their death, and with particulars as may be necessary to their identification; and

(2) as soon as possible after holding an inquest, deliver to the property clerk of the Metropolitan Police Department all moneys and other property and effects found upon the person of anyone on whom he holds an inquest.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1203 (Mar. 3, 1901, ch. 854, § 192, 31 Stat. 1221).

Section is derived from part of section 11-1203 of D.C. Code, 1961 ed. For remainder of section 11-1203, see section 11-1902 herein.

Changes are made in phraseology.

#### § 11-1906. Fees of witnesses and jurors—Allowances.

Witnesses and jurors lawfully summoned in an inquest shall receive the fees and travel and subsistence allowances as may be fixed, with respect to witnesses, by chapter 119 of Title 28, United States Code, and, with respect to jurors, by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1515 (Mar. 3, 1901, ch. 854, § 195, 31 Stat. 1221.)

Section 11-1515 of D.C. Code, 1961 ed., provided that jurors and witnesses lawfully summoned in any inquest should be paid the same fees and compensation allowed to jurors and witnesses attending the District Court. The provisions, as herein revised, refer to chapter 119 and section 1871 of Title 28, United States Code, which respectively fix the fees and allowances of witnesses and jurors attending the District Court.

Changes are made in phraseology.

#### Chapter 21.—ATTORNEYS

##### Sec.

11-2101. Admission to bar—Regulations—Oath.

11-2102. Censure, suspension, or disbarment by District Court for cause.

11-2103. Disbarment by District Court upon conviction of crime.

11-2104. Censure, suspension, or disbarment by other courts.

11-2105. Procedure for censure, suspension, or disbarment.

#### § 11-2101. Admission to bar—Regulations—Oath.

The United States District Court for the District of Columbia may make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion. Every person so admitted, before he is permitted to practice therein, shall take and subscribe the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I well demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States." (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1301 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 218, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

#### § 11-2102. Censure, suspension, or disbarment by District Court for cause.

The United States District Court for the District of Columbia may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with his application or admission is sufficient cause for the revocation by the court of his admission. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1302 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 219, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

#### § 11-2103. Disbarment by District Court upon conviction of crime.

When a member of the bar of the United States District Court for the District of Columbia is convicted of an offense involving moral turpitude, and a duly certified copy of the final judgment of the conviction is presented to the court, the name of the



member so convicted may thereupon, by order of the court, be struck from the roll of the members of the bar, and he shall thereafter cease to be a member thereof. Upon appeal from a judgment of conviction, and pending the final determination of the appeal, the court may order the suspension from practice of the convicted member of the bar; and upon a reversal of the conviction, or the granting of a pardon, the court may vacate or modify the order of disbarment or suspension. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1103 (Mar. 3, 1901, ch. 854, § 219a, as added Apr. 19, 1920, ch. 153, 41 Stat. 561).

Changes are made in phraseology.

### § 11-2104. Censure, suspension, or disbarment by other courts.

The District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, may censure, suspend, or expel an attorney from practice, at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-775 (Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is derived from the first sentence of section 11-775 of D.C. Code, 1961 ed. For remainder of section 11-775, see section 11-2105 herein.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

### § 11-2105. Procedure for censure, suspension, or disbarment.

A member of the bar may not be censured, suspended, nor expelled as provided by section 11-2102 or 11-2104, until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally by the United States marshal or such other person as the court designates, or if it is established to the satisfaction of the court that personal service can not be had a certified copy of the charges and order shall be served upon him by mail, publication, or otherwise as the court directs. After the filing of the written charges the court may suspend the person charged from practice at its bar pending the trial thereof. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-775, 11-1304 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 220, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196).

Section consolidates that part of section 11-775 of D.C. Code, 1961 ed., which related to procedure to be followed in the Municipal Court of Appeals or the Municipal Court (now, District of Columbia Court of Appeals,

and District of Columbia Court of General Sessions, respectively), in the censure, suspension, or disbarment of attorneys, with section 11-1304 thereof, which related to the procedure in the District Court. The provisions were substantially identical. For remainder of section 11-775, see section 11-2104 herein.

Changes are made in phraseology.

## Chapter 23.—JURORS AND JURY COMMISSIONERS

### Sec.

11-2301. Qualifications of jurors.

11-2302. Exemptions.

11-2303. Jury commission—Appointment, qualifications, oath, tenure, compensation, and removal.

11-2304. Record of names—Jury box—Custody.

11-2305. Selection of jurors.

11-2306. Manner of drawing.

11-2307. Substitution in case of vacancies.

11-2308. Disposition of box after drawing—Excuse from further service.

11-2309. Filling vacancies—Deficiencies in panel.

11-2310. Talesmen from bystanders.

11-2311. Summoning jurors.

11-2312. Length of service.

11-2313. Fees of jurors—Allowances.

11-2314. Marshal to have charge—Deputies.

### § 11-2301. Qualifications of jurors.

(a) Any citizen of the United States who has attained the age of 21 years and who has resided for a period of one year within the District of Columbia is competent to serve as a grand or petit juror in courts of the District unless he:

(1) has been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year, and his civil rights have not been restored by pardon or amnesty;

(2) is unable to read, write, speak and understand the English language; or

(3) is incapable by reason of mental or physical infirmities to render efficient jury service.

(b) An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716a, 11-755, 11-936, 11-1417, 11-1418 (Mar. 3, 1901, ch. 854, §§ 45, 215, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(a) (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 408, 67 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 2, 77 Stat. 78).

Section consolidates section 11-1417 of D.C. Code, 1961 ed., which related to qualifications of jurors, with that part of section 11-1418 thereof which prohibited disqualification of grand or petit jurors by reason of sex; that part of section 11-716a thereof which, as originally enacted, related to the Police Court and provided that jurors serving in that court should have the legal qualifications necessary for jurors in the District Court; that part of section 11-716 thereof, which, with respect to the first Municipal Court (prior to its merger under section 11-751 thereof with the Police Court to form the second Municipal Court, now, under section 11-751a thereof, the District of Columbia Court of General Sessions), although not specifically referring to qualifications of jurors implied that they should have the same legal qualifications as jurors in the District Court by providing that jurors



in the Municipal Court should be drawn and selected in the same manner as those drawn and selected for service in the District Court and by making applicable thereto the same laws relating to jurors that were applicable to jurors serving in the District Court; that part of section 11-755(a) thereof, which, in connection with the merger of the Police Court and the first Municipal Court to form the second Municipal Court (under section 11-751 thereof), impliedly continued the same set-up and procedure regarding juries and jurors in criminal and civil cases by providing that the Municipal Court thus established should have a criminal branch and a civil branch (later laws increased the number of branches) and that, in addition to other jurisdiction conferred, the court and its judges should have the same powers and jurisdiction theretofore had by the two courts prior to the merger; and that part of section 11-936 of the Code which, with respect to the Juvenile Court, provided that jurors serving in that court should have the legal qualifications necessary for jurors in the District Court.

Section 11-1417 of D.C. Code, 1961 ed., provided: "No person shall be competent to act as a juror unless he is a citizen of the United States, a resident of the District of Columbia, over twenty-one years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or misdemeanor involving moral turpitude."

The provisions of subsec. (a), as herein revised, are patterned upon 28 U.S.C., § 1861, which presumably already applies in the United States District Court for the District of Columbia. See 28 U.S.C., §§ 88, 132, 451. As herein set out, the provisions of this section apply to grand jurors and to petit jurors serving in any court of the District, including the District of Columbia Court of General Sessions.

The clause in section 11-1418 of D.C. Code, 1961 ed., "but the provisions of law relating to the qualifications of jurors and exemptions from jury duty shall in all cases apply to women as well as to men" is omitted as unnecessary. Subsec. (a) of this revised section and section 11-2302 herein are couched in general terms, and relate to both sexes, particularly considering subsec. (b) hereof.

For remainder of sections 11-716, 11-716a, 11-755, 11-936 and 11-1418 of D.C. Code, 1961 ed., see tables.

#### CROSS REFERENCE

Impanelling jury, see § 11-2306.

#### § 11-2302. Exemptions.

The following persons are exempt from jury service:

- (1) members in active service in the armed forces of the United States;
- (2) members of the fire and police departments of the United States and of the District of Columbia;
- (3) public officers in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia who are actively engaged in the performance of official duties;
- (4) attorneys-at-law in active practice;
- (5) ministers of the gospel and clergymen of every denomination;
- (6) physicians and surgeons in active practice;
- (7) keepers of charitable institutions created by or under the laws relating to the District of Columbia; and
- (8) persons employed on vessels navigating the waters of the District of Columbia.

All other persons, otherwise qualified according to law, whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired; all officers and enlisted men in the reserve

components of the armed forces of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, are qualified to serve as jurors in the District of Columbia and are not exempt from jury service. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1420 (Mar. 3, 1901, ch. 854, § 217, 31 Stat. 1224; Feb. 18, 1909, ch. 146, § 73, 35 Stat. 636; Aug. 22, 1935, ch. 605, 49 Stat. 682).

Clauses (1), (2) and (3), of this section, while they make no change in substance, instead of following, identically, the language in the first paragraph of section 11-1420 of D.C. Code, 1961 ed., with respect to the exemptions they cover, are patterned upon section 1862 of Title 28 U.S.C., which already applies to jury service in the United States District Court for the District of Columbia, and perhaps to other courts of the District, considering the sections of D.C. Code, 1961 ed., cited in revision note under section 11-2301 herein. The remaining clauses in this section are taken from the other provisions in section 11-1420 of D.C. Code, 1961 ed.

In clause (7), reference to "hospitals, asylums, almshouses" is omitted as redundant and covered by "charitable institutions"; and, in clause (8), reference to "captains and masters" is omitted as redundant and covered by "persons employed on vessels", etc.

The second (final) paragraph of section 11-1420 of D.C. Code, 1961 ed., contained a proviso, at the end, as follows: "Provided, That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law." This proviso is omitted, as apparently it was superseded by act June 29, 1940, ch. 446, 54 Stat. 689 (5 U.S.C. §§ 30n, 30o, 30p).

Changes are made in phraseology and arrangement.

#### § 11-2303. Jury commission; appointment, qualifications, oath, tenure, compensation, and removal.

(a) The jury commission shall continue in the District of Columbia.

(b) The commission consists of three commissioners appointed by the United States District Court for the District of Columbia.

(c) Any person may be appointed a jury commissioner if he:

- (1) is a citizen of the United States;
- (2) is an actual resident of the District, and has been domiciled therein for at least three years prior to his appointment;
- (3) owns real property in the District;
- (4) is not engaged in the practice of law; and
- (5) at the time of his appointment, is not a party to any cause pending in a court of the District.

A person otherwise qualified is not disqualified from service as a jury commissioner by reason of sex, but a woman may not be compelled so to serve.

(d) Jury commissioners shall be appointed or reappointed for terms of three years each, staggered so that one commissioner will be appointed each year; and they shall continue in office until the appointment and qualification of their successors.

(e) Each jury commissioner shall receive \$10 per day for each day or fraction of a day when he is actually engaged in the performance of his duties,



not to exceed five days in a month, nor \$250 in a year, which shall be paid, upon the commissioner's certificate, by the United States marshal for the District of Columbia.

(f) Each jury commissioner, when appointed, shall take an oath of office prescribed by the District Court.

(g) The District Court may summarily remove a jury commissioner for:

(1) absence, inability, or failure to perform his duties; or

(2) misfeasance or malfeasance in office—and may appoint another person for the unexpired term.

(h) If a jury commissioner is ill or otherwise unable to perform the duties of his office, or is absent from the District, the remaining two commissioners may perform the duties of the commission. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1401, 11-1418 (Mar. 3, 1901, ch. 854, § 198, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates part of section 11-1401 of D.C. Code, 1961 ed., with part of section 11-1418 thereof. All this section is derived from section 11-1401 except the last paragraph of subsec. (c) prohibiting disqualification by reason of sex. For remainder of section 11-1401 and section 11-1418, see sections 11-2304 and 11-2301 herein, respectively.

The provisions in section 11-1401 of D.C. Code, 1961 ed., restricting the period of appointments and removals to the "general term" of the District Court are omitted as obsolete. Under prior law, there were a "general term" and five "special terms" of the District Court and the latter were designated as, respectively, the circuit court, equity court, criminal court, probate court and district court (D.C. Code, 1961 ed., former sections 11-310, 11-311, which were repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110). This arrangement was changed upon the enactment of Title 28 U.S.C. into law in 1948, under which the District of Columbia was made a judicial district. Terms of the United States District Court for the District of Columbia are now governed by 28 U.S.C. §§ 137-141, and rules of court. See also, 28 U.S.C. § 452.

The provision of section 11-1401 of D.C. Code, 1961 ed., that the compensation of the jury commissioners should be paid "out of the appropriation for pay of bailiffs" is omitted as apparently obsolete. A lump-sum appropriation for fees, expenses, and costs of jurors, compensation of jury commissioners, and fees of United States commissioners and other committing magistrates is now made in annual judiciary appropriation acts. See the Judiciary Appropriation Act, 1963 (act Oct. 18, 1962, Pub. L. 87-843, title IV, 76 Stat. 1097 (1959)).

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Challenge of jurors in criminal cases, see § 23-108.

Coroner's jury, see § 11-1902.

Juries for proceedings in juvenile court, see § 16-2382.

Juries in cases to condemn land for alleys and minor streets, see §§ 7-213a, 7-315, 7-317.

Juries in cases to condemn land for streets outside Washington and Georgetown, see §§ 7-205, 7-206, 7-209, 7-213a.

Juries generally, see § 11-2301 et seq.

Jury fees, see § 11-2313.

Jury in lunacy proceedings, see §§ 21-312, 21-314.

Jury to determine sanity of person charged with or convicted of crime, see § 24-301.

Jury trial in vagrancy proceedings, see § 22-3301.

Peremptory challenges, see § 23-107.

Special juries in proceedings to condemn land for

United States, see § 16-1357.

Struck juries, see § 13-701.

#### FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, see Rule 47, U.S. Code, Title 28, Appendix.

Juries and jury trials, see Rules 38, 39, 47.

#### § 11-2304. Record of names—Jury box—Custody.

(a) The jury commission shall:

(1) make and preserve a record of the list of names of grand and petit jurors, including the names of commissioners and jurors in condemnation proceedings, for service in all the courts of the District having cognizance of jury trials and condemnation proceedings;

(2) write the names of the jurors, including the names of commissioners and jurors in condemnation proceedings, on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and place them in a jury box to be provided for the purpose;

(3) thereupon seal the jury box, and after thoroughly shaking it, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping;

(4) have custody and control of the jury box;

(5) keep a sealed record, in alphabetical form, of all names remaining in the jury box from time to time, and deposit the record for safekeeping in the office of the clerk of the District Court when the commission is not in session.

(b) Only the commission may unseal or open the jury box, or have access to the record required by clause (5) of subsection (a) of this section. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1401, 11-1403, 11-1404, 11-1411 (Mar. 3, 1901, ch. 854, §§ 198, 200, 201, 207, 31 Stat. 1222; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (558, 560); Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates the fourth sentence of section 11-1401 of D.C. Code, 1961 ed., with sections 11-1403 and 11-1404, and the second sentence of section 11-1411. For remainder of sections 11-1401 and 11-1411, see sections 11-2303 and 11-2306 herein.

The provision in section 11-1401 of D.C. Code, 1961 ed., that the jury commission shall draw the names of jurors and condemnation commissioners "from time to time, as hereinafter provided", is omitted as unnecessary, in view of the other provisions in this chapter prescribing the particular duties of the jury commission.

Changes are made in phraseology and arrangement.

#### § 11-2305. Selection of jurors.

The jury commission shall select the jurors and commissioners specified by section 11-2304, as nearly as may be, from intelligent and upright residents of the District. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1402 (Mar. 3, 1901, ch. 854, § 199, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; June 29, 1953, ch. 159, § 408, 67 Stat. 107).

The provision in section 11-1402 of D.C. Code, 1961 ed., that the jurors shall be selected from the different parts of the District is omitted as covered by section 1865 of Title 28, United States Code.

Changes are made in phraseology.



§ 11-2306. Manner of drawing.

(a) Grand and Petit Jurors for District Court.—At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without previous examination, the names of such number of persons as the court directs to serve as grand and petit jurors in the court; and

(2) forthwith certify to the clerk of the court the names of the persons so drawn as jurors.

If the United States attorney for the District of Columbia certifies in writing to the chief judge of the District Court, or in his absence, to the presiding judge, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the chief judge, or, in his absence, the presiding judge, the additional grand jury shall serve until the end of the term in and for which it is drawn.

(b) Number of Names in Jury Box.—At the time of each drawing of jurors by the jury commission, there shall be in the jury box the names of not less than six hundred qualified persons.

(c) Other Courts.—At least ten days before each term of the District of Columbia Court of General Sessions or of the Juvenile Court of the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without examination, the names of persons to serve as petit jurors in those courts; and

(2) forthwith certify to the clerk of the District Court the names of the persons so drawn.

In each drawing of jurors under this subsection, the jury commission shall draw, for service in the Court of General Sessions, such number of names as the court directs, and for service in the Juvenile Court, at least twenty-six names.

Upon receipt of the certification referred to in this subsection, the clerk of the District Court shall certify the names to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term.

(d) The distribution, assignment, reassignment, and attendance of petit jurors in courts of the District shall be in accordance with rules prescribed by the respective courts. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716a, 11-751a, 11-755, 11-936, 11-937, 11-1407, 11-1408, 11-1411 (Mar. 3, 1901, ch. 854, §§ 45, 204, 207, 31 Stat. 1197, 1222; Jan. 31, 1902, ch. 5, § 1, 32 Stat. 2; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604), Apr. 19, 1920, ch. 153, 41 Stat. 559, 560; May 19, 1922, ch. 194, 42 Stat. 543; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; June 14, 1926, ch. 577, 44 Stat. 741; July 3, 1926, ch. 784, 44 Stat. 892; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat.

107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-1407 and the first sentence of section 11-1411 of D.C. Code, 1961 ed., which related to the manner of drawing jurors and certification of the names drawn with those parts of sections 11-716, 11-716a, 11-936, and 11-937 thereof, which, with respect to the Police Court and the first Municipal Court (prior to the merger of those two courts, under section 11-751 thereof, to form the second Municipal Court), and the Juvenile Court, provided among other things that jurors for those courts should be drawn and selected under and pursuant to the laws concerning the drawing and selection of jurors for the District Court; with that part of section 11-755(a), which with respect to the merger of the Police Court and the first Municipal Court to form the second Municipal Court, provided (before its amendment by act Oct. 23, 1962) that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof; and with section 11-1408, which provided for the drawing and summoning of an additional grand jury upon certification of the United States attorney.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751 a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The first paragraph of subsec. (a), including clauses (1) and (2) thereof, which relates to the drawing of grand and petit jurors for the District Court, is derived from the first paragraph of section 11-1407 of D.C. Code, 1961 ed., which provided that, at least 10 days before the first Tuesday of each month specified in section "18-1405" (11-1405) when jury trials were to be had, the jury commission should "publicly break the seal of the jury box and proceed to draw", etc. Section "18-1405", referred to therein, is a misprint, and should read "11-1405", which was a section relating to the term of service of petit jurors in the District Court, and in connection therewith provided that such terms should begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and should terminate on the Monday preceding the first Tuesday of the next month thereafter, and among other things also provided that the court in "general term" might direct petit jurors to be drawn for monthly service in the court during the months of July, August, and September, "such service to begin and terminate as aforesaid".

Prior to the enactment, in 1948, of Title 28 of the United States Code, it was provided by statute that the District Court in the District of Columbia should have a general term for the transaction of business (but not for hearing any cause), and special terms (the number of which were to be fixed by the Court in general term) known as the circuit court, equity court, criminal court, probate court, and district court. However, in Title 28 of the United States Code, the District of Columbia is made a judicial district, and the time for holding regular terms is fixed by each district court. Each such court may also fix the time for any special terms pursuant to rules approved by the judicial council of the circuit, at which it may transact any business that may be transacted at regular terms. See 28 U.S.C. §§ 88, 132, 137, 141, 451. See, also, Rule 2 of the Local Rules of the U.S. District Court for the District of Columbia, which fix the commencement of terms of each division of the Court as the first Tuesday of January, April, July, and October.

In view of these changes in the status and operation of the District Court in the District of Columbia, subsec. (a) of this section, instead of fixing definite times for the drawing of jurors for the District Court, provides merely that at least 10 days before each term of the Court at which jury trials are to be had, the jury commission shall draw the names in the manner provided in the subsection. As before, the number of names to be drawn is left to the discretion of the Court.

The second paragraph of subsec. (a) is derived from section 11-1408 of D.C. Code, 1961 ed. In this paragraph,



"presiding judge" is substituted for "senior associate judge," to conform with Title 28 U.S.C. § 136.

Subsec. (b) of this revised section is derived from the first sentence of section 11-1411 of D.C. Code, 1961 ed., cited above. Words in that sentence, "which names shall have been placed therein by said jury commission", are omitted as unnecessary and covered by section 11-2304 herein.

The three paragraphs of subsec. (c), including clauses (1) and (2) in the first paragraph, are derived from the third paragraph of section 11-1407 of D.C. Code, 1961 ed., and parts of section 11-716, 11-716a, 11-936, and 11-937 thereof. Section 11-716a, which, as originally enacted, related to the former Police Court, did not specify the number of names to be drawn for that court, and among other things provided merely that the jury for service in the court (which had criminal jurisdiction only) should consist of twelve persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court. Under former section 11-609 of D.C. Code, 1961 ed., the Police Court held a term on the first Monday of every month, and might continue each term from day to day as long as it was necessary for the transaction of its business.

Section 11-716, which related to the first Municipal Court prior to its merger in 1942 with the Police Court to form the second Municipal Court, also provided that jurors for that court (which prior to the merger had civil jurisdiction only) should be drawn and selected in the manner provided for drawing and selecting jurors for the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October". It further provided that, at least 10 days before the term of service of jurors should begin, the clerk of the District Court should certify to the Municipal Court, for service as jurors for the then ensuing term, the names of not more than 36 persons, "drawn as directed by law". Those provisions were affected to some extent by the third paragraph of section 11-1407, as amended, the contents of which are stated below. Section 11-702 thereof provided that the Municipal Court should have the same terms of court "as those now obtaining, or as hereafter modified, in the circuit branches" of the District Court. The terms of the Municipal Court (now Court of General Sessions), since its merger with the Police Court, are, except for certain of its branches, fixed by court rule, permitted by section 11-754(a) of D.C. Code, 1961 ed., which is carried in to section 11-904 herein. Under the provisions thereof, the chief judge is empowered to fix the time of the various sessions of the court; and under the Rules of the Court, Section I, Rule 80, which relates to the civil division, and Rule 3(a) of the Court's rules relating to the criminal division, the terms of court begin on the first Tuesday of January, April, July, and October. Under Section II, Rule 1, of the rules, the Landlord and Tenant Branch, in which jury trials may be had on demand, holds sessions every week day except Saturday. Under Part I, Section III, Rule 1, the Small Claims and Conciliation Branch, in which jury trials may be had on demand, holds sessions every day except Sundays and legal holidays, and also on Wednesday of each week, at 7:30 p.m. This is required by statute. See section 11-816 of D.C. Code, 1961 ed., which is carried into section 11-1303 herein.

Section 11-936, enacted in 1938, provided that jury service in the Juvenile Court should consist of 12 persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court; and section 11-937 thereof, also enacted in 1938, provided that, at least 10 days before the term of service of jurors for the Juvenile Court should begin, the jurors should be drawn, and at least 26 names so drawn be certified by the clerk of the District Court to the Juvenile Court for service as jurors for the then ensuing term. Terms of the Juvenile Court are fixed by statute. Section 11-905 of D.C. Code, 1961 ed. (see section 11-1504 herein), provided that the

court shall hold a term on the first Monday of every month and continue the term from day to day as long as it might be necessary for the transaction of its business.

The third paragraph of section 11-1407 of D.C. Code, 1961 ed., which was last specifically amended in 1926, provided that, at least 10 days before the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, the jury commission should draw the names of persons to serve as jurors in the Municipal Court (until affected by the merger law of 1942, the section related to the Police Court) and in the Juvenile Court, and also the names of persons to serve as jurors "in any other court in the District of Columbia which hereafter may have cognizance of jury trials", and certify the respective list of jurors to the clerk of the District Court.

In view of the changed status and manner of operation of these courts since the above-mentioned provisions relating to the drawing of jurors were enacted, the three paragraphs of subsec. (c) of this revised section consolidate those provisions and provide merely that at least 10 days before each term of the Court of General Sessions or of the Juvenile Court, at which jury trials are to be had, the jury commission shall draw (in the manner provided) the names of persons to serve as petit jurors in those courts, and certify them to the clerk of the District Court who, in turn, shall certify them to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term. In the case of the Juvenile Court, the drawing of at least 26 names is preserved. In the case of the Court of General Sessions, the number of names to be drawn is left to the discretion of the court. This conforms with present practice in that court.

The second paragraph of section 11-716 of D.C. Code, 1961 ed., relating to additional jurors for the first Municipal Court prior to its merger with the Police Court, provided:

"Whenever the judges of the municipal court shall certify in writing that the business of said court requires the services of additional jurors and shall file a certificate to that effect in the office of the clerk of the District Court of the United States for the District of Columbia, said District Court shall direct the clerk of the said District Court to certify to said municipal court for service as jurors for the then ensuing terms the names of such number of other persons as may be necessary for such service, which names shall be drawn as directed by law."

That paragraph is omitted as unnecessary, since the provisions for drawing jurors before the commencement of any term of the Court of General Sessions, as herein revised, no longer restrict the drawing to a maximum number of names. The number is left to the discretion of the court, as stated above.

Subsec. (d) of this section is from the second paragraph of section 11-1407 of D.C. Code, 1961 ed., and as herein set out relates to all courts of the District having cognizance of jury trials. This, also, is current practice.

Changes are made in phraseology and arrangement.

For remainder of sections 11-716, 11-716a, 11-755, 11-936, 11-937, and 11-1411 of D.C. Code, 1961 ed., see tables.

#### § 11-2307. Substitution in case of vacancies.

When a person whose name is drawn from the jury box is dead or has removed from the District before being selected, or removes therefrom after being selected, or becomes otherwise disqualified or disabled, the jury commission shall destroy the slip containing his name, and shall draw from the box the name of another person to serve in his stead. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1409 (Mar. 3, 1901, ch. 854, § 205, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 580).

Changes are made in phraseology.



### § 11-2308. Disposition of box after drawing—Excuse from further service.

When the requisite number of jurors has been drawn, the jury commission shall seal the jury box and deliver it to the clerk of the United States District Court for the District of Columbia for safe-keeping. Except in the case of persons who are excused from service or for other reasons fail to serve, the names of the persons drawn may not be placed again in the box for one year. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1410 (Mar. 3, 1901, ch. 854, § 206, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 560; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

### § 11-2309. Filling vacancies—Deficiencies in panel.

When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are excused from service by the court for which their names were drawn, the jury commission, under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies occur therein, the commission shall fill them in like manner. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716b, 11-755, 11-937, 11-1412 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 46, 208, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 560; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 2, 76 Stat. 1171; July 8, 1963; Pub. L. 88-60, § 2, 77 Stat. 78).

Section consolidates section 11-1412 of D.C. Code, 1961 ed., relating to filling jury vacancies with respect to the District Court, with those parts of sections 11-716, 11-716b, and 11-937 thereof, that respectively made applicable to the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11-716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court the laws concerning the filling of deficiencies in a jury panel in the District Court. With respect to the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11-755 of D.C. Code, 1961 ed., also cited above, provided that, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11-716, 11-716b, 11-755, and 11-937, see tables.

The provisions as redrafted in this section, relate to filling deficiencies in jury panels in the three courts, that is the District Court, the Court of General Sessions, and the Juvenile Court.

Changes are made in phraseology.

### § 11-2310. Talesmen from bystanders.

When sufficient petit jurors are not available, the District of Columbia Court of General Sessions and the Juvenile Court have the same powers to require the United States marshal to summon a sufficient number of talesmen from the bystanders as those

vested in the District Court by section 1866(a) of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716b, 11-751a, 11-755, 11-937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Mar. 9, 1962, Pub. L. 87-413; § 3(d), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

While the text of this section is new, it is authorized by sections 11-716, 11-716b, and 11-937 of D.C. Code, 1961 ed., cited above, which respectively made the provisions of law relating to the filling of deficiencies in jury panels in the District Court applicable to the former Police Court (prior to the act of April 1, 1942, the provisions of section 11-716b related to that court) the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court, and which further provided, in connection with such deficiencies, that judges of those courts should possess all the powers of a judge of the District Court and of that court sitting as a "special term" (see revision note under section 11-2306 herein); and by subsec. (a) of section 11-755 of the Code, cited above, which, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, provided that the court thus formed (now, the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11-716, 11-716b, 11-755, and 11-937, see tables.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The power of the District Court to require the United States marshal to summon a sufficient number of talesmen from the bystanders, whenever sufficient petit jurors are not available, is conferred by subsec. (a) of section 1866 of Title 28, United States Code, to which this section refers.

### § 11-2311. Summoning jurors.

When a petit jury has been drawn for the District of Columbia Court of General Sessions or the Juvenile Court, and the names of the jurors have been certified to the clerk of the court by the clerk of the District Court as provided by section 11-2306(c), the clerk of the former court shall issue summonses for the required number of jurors and deliver them to the United States marshal for the District for service. The marshal or his deputies shall serve each summons and make return of service in the manner provided by section 1867 of Title 28, United States Code, with respect to summoning jurors for district courts. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716a, 11-751a, 11-755, 11-936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).



While the text of this section is new, it is presumably authorized by sections 11-716, 11-716a, and 11-936 of D.C. Code, 1961 ed., cited above, or implied by them, in the respective provisions thereof that jurors for service in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11-716a related to that court), the Municipal Court (prior to its merger, in 1942, with the Police Court), and the Juvenile Court should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in the District Court. Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11-755 of the Code, cited above, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now, under section 11-751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same powers previously vested in the prior courts and the judges thereof. For remainder of sections 11-716, 11-716a, 11-755, and 11-936, see tables.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 1867 of Title 28, United States Code, provides for summoning jurors for district courts, including the United States District Court for the District of Columbia, manner of service, and return of service.

#### § 11-2312. Length of service.

(a) Petit jurors summoned for service in a court of the District shall serve for such period of time and at such sessions of the court as the court directs, but, unless actually engaged as a trial juror in a particular case, may not be required to serve in the District Court or the District of Columbia Court of General Sessions for more than one month in any twelve consecutive months, or to serve in the Juvenile Court for more than three months in any twelve consecutive months.

(b) Jury service in one court does not exempt, exclude, or disqualify a person from jury service in another court, except during his term of actual service.

(c) This section does not affect the provisions of section 1869 of Title 28, United States Code, relating to frequency of petit jury service in district courts, including the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716a, 11-716b, 11-751a, 11-755, 11-936, 11-937, 11-1405 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 45, 46, 202, 31 Stat. 1197, 1222; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 559; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-1405 of D.C. Code, 1961 ed., which related to term of service of petit jurors in the District Court, with those parts of sections 11-716, 11-716a, 11-716b, 11-936, and 11-937 of the Code, which related to terms of service of petit jurors in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of sections 11-716a and 11-716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court. In connection

with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11-755 of the Code, also cited above, provided (prior to its amendment by the act of Oct. 23, 1962) that the court thus formed (now, under section 11-751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11-1405 of D.C. Code, 1961 ed., provided as follows:

"The respective terms of service of petit jurors drawn for service in the United States District Court for the District of Columbia shall begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and shall terminate on the Monday preceding the first Tuesday of the next month thereafter, except when the jury shall be discharged by the court at an earlier day, or when a jury shall be empaneled and it shall happen that no verdict shall have been found before the day appointed by law for the commencement of the next succeeding term, in which case the court shall proceed with the trial by the same jury in every respect as if its term of service had not ended; and all proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been empaneled: *Provided*, That the United States District Court for the District of Columbia in general term may direct petit jurors to be drawn for monthly service in said court during the months of July, August, and September, such service to begin and terminate as aforesaid."

The provisions in the Code with respect to terms of service of jurors in other courts were as set out below.

*Former Police Court.*—Until affected by the merger act of Apr. 1, 1942, the provisions of section 11-716a provided in part that jurors in the Police Court should serve for a like term as the petit jury in the District Court, and provided further that: "When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury, as if said term had not commenced: *Provided*, That this section shall not be effective as to any panel or panels of jurors drawn under the existing law"; and, until also affected by the 1942 act, section 11-716b provided in part: "No person shall be eligible for service on a jury in said Police Court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such grounds unless objection shall be made before the trial begins. Service on such jury shall not render any person exempt, ineligible, or disqualified for service as a juror in said United States District Court for the District of Columbia, except during his term of actual service in said police court."

*Municipal Court.*—Section 11-716, which related to the Municipal Court prior to its merger, in 1942, with the Police Court, provided in part that the term of service of its jurors should be the same as that prescribed by the laws "now obtaining, or as hereafter modified", with respect to jurors in the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October".

*Juvenile Court.*—Section 11-936 provided that the term of service of jurors in the Juvenile Court should be for three successive monthly terms of the court, "and in any case on trial at the expiration of such time until a verdict shall have been rendered or the jury shall be discharged". It also provided that "The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing provisions, on the Saturday prior to the beginning of the



following term. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury as if said term had not commenced". Section 11-937 provided in part that "No person shall be eligible for service on a jury in said juvenile court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins".

The provisions of the several sections referred to or quoted above are consolidated into this single section, and are simplified. To conform with section 11-2306 herein, the fixing of the time of commencement of jury service is left to the courts, but subsec. (a) places limits on the periods of required service in each of the courts of the District having cognizance of jury trials. See revision note under section 11-2306.

It will be noted that in subsec. (a) it is provided that, unless actually engaged as a trial juror in a particular case, a juror may not be "required" to serve for a longer time than the periods stated, rather than providing, as in sections 11-716b and 11-937 of D.C. Code, 1961 ed., that no person shall be "eligible" for jury service for more than one jury term in any period of twelve consecutive months. Therefore, the provision in each of those sections "but no verdict shall be set aside on such ground [on the ground of such ineligibility] unless objection shall be made before the trial begins" is omitted.

Section 1869 of Title 28, United States Code, referred to in subsec. (c), provides that in any district court (including the United States District Court for the District of Columbia) a petit juror may be challenged on the ground that he has been summoned and attended such court as a petit juror at any term held within 1 year prior to the challenge.

See, also, sections 138-141 of Title 28, United States Code, under which district courts fix their terms of court, both regular and special, by court rules (which in the case of special terms, must be approved by the judicial council of the circuit). Under section 141, any business may be transacted at a special term that might be transacted at a regular term.

For remainder of sections 11-716, 11-716a, 11-716b, 11-755, 11-936, and 11-937 of D.C. Code, 1961 ed., see tables.

#### § 11-2313. Fees of jurors—Allowances.

Jurors serving in the District of Columbia Court of General Sessions and the Juvenile Court shall receive the fees fixed by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716, 11-716a, 11-751a, 11-755, 11-936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates those provisions of sections 11-716, 11-716a, and 11-936 of D.C. Code, 1961 ed., which related to the compensation of jurors serving in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11-716a related to that court), the Municipal Court, prior to its merger with the Police Court, and the Juvenile Court. In each of those sections, it was provided that jurors should receive the same compensation as that received by jurors in the District Court. Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11-755 of D.C. Code, 1961 ed., also cited above as one of the sources of this section, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now Court of

General Sessions) and the judges thereof should have and exercise the same powers and jurisdiction previously vested in the prior courts and the judges thereof.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The above-mentioned provisions of sections 11-716, 11-716a, and 11-936 of D.C. Code, 1961 ed., as consolidated and rewritten in this section, refer to section 1871 of Title 28, United States Code, which is the section providing for compensation with respect to jurors in district courts (and before United States commissioners), including the United States District Court for the District of Columbia.

The provision of section 11-716 of D.C. Code, 1961 ed., that jurors in the Municipal Court (now Court of General Sessions) should be subject to the same duties and liabilities as those of jurors in the District Court is omitted as unnecessary in view of the consolidation in this chapter of the provisions relating to jurors in the several courts of the District.

For remainder of sections 11-716, 11-716a, 11-755, and 11-936 of D.C. Code, 1961 ed., see tables.

#### § 11-2314. Marshal to have charge—Deputies.

The United States marshal for the District shall have charge of the juries in the District of Columbia Court of General Sessions and the Juvenile Court, and may assign deputies for the purpose. The deputies shall perform such other services as the judges may require. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-716b, 11-721, 11-751a, 11-755, 11-937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 596 (604); Mar. 3, 1921, ch. 125, § 10, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the fourth sentence of section 11-716b of D.C. Code, 1961 ed., section 11-721 thereof, and the fourth sentence of section 11-937 thereof.

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (the second Municipal Court, formed from the 1942 court merger referred to below) to the District of Columbia Court of Special Sessions.

The provisions of section 11-716b of D.C. Code, 1961 ed., which related to the Police Court prior to its merger with the Municipal Court, specified by the fourth sentence thereof that "The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose". Identical provisions were contained in the fourth sentence of section 11-937 of the Code, which related to the Juvenile Court.

Section 11-721 of D.C. Code, 1961 ed., which related to the first Municipal Court prior to its merger with the Police Court to form the second Municipal Court (now, the Court of General Sessions), provided that "The marshal of the United States in and for the District of Columbia shall designate two of his deputies to take charge of the jurors in the municipal court, under the direction of the trial judge, and they shall perform such other services as the judge may require."

Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11-755 of D.C. Code, 1961 ed., also cited as one of the sources of this section, provided, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the first Municipal Court, to



form the second Municipal Court, that the court thus formed and the judges thereof should have and exercise the same powers and jurisdiction theretofore vested in the prior courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11-755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court, formed from the 1942 merger mentioned above) and the judges thereof.

This section, with changes in phraseology, represents a consolidation of the above-quoted provisions of sections 11-716b, 11-721 and 11-937 of D.C. Code, 1961 ed., with the reference to the Court of General Sessions substituted for the references in those sections to the Municipal Court. For remainder of such sections, see tables.

For powers and duties of the marshals with respect to district courts (including the United States District Court for the District of Columbia) and other federal courts, see section 547 et seq. of Title 28, United States Code.

## TITLE 12.—RIGHT TO REMEDY

Chap.		Sec.
1. Abatement and Revivor.....	12-101	
3. Limitation of Actions.....	12-301	

### Chapter 1.—ABATEMENT AND REVIVOR

Sec.	
12-101.	Survival of rights of action.
12-102.	Substitution of parties.
12-103.	Judgment and costs in case of new party.
12-104.	Marriage of party.

#### § 12-101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action survives in favor of or against the legal representative of the deceased. In tort actions for personal injuries, the right of action is limited to damages for physical injury, excluding pain and suffering resulting therefrom. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-101 (Mar. 3, 1901, ch. 854, § 235, 31 Stat. 1227; June 19, 1948, ch. 508, § 1, 62 Stat. 487).

The second sentence of this section is rewritten from a clause of section 12-101 of D.C. Code, 1961 ed., which read "Provided, however, That in tort actions, the said right of action shall be limited to damages for physical injury except for pain and suffering resulting therefrom" in order to clarify the meaning of that provision. See *Soroka et al. v. Beloff*, 1950, 93 F. Supp. 642.

Other changes are made in phraseology.

#### CROSS REFERENCES

Actions for wrongful death, see §§ 16-2701 to 16-2703.  
Dissolution of corporations, effect, see §§ 29-716 to 29-718.

Suits by or against executors or administrators, see § 20-501.

#### § 12-102. Substitution of parties.

The substitution of parties in civil actions in the United States District Court for the District of Columbia and District of Columbia Court of General Sessions is governed by the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 12-102 to 12-105, 12-107 to 12-111, 12-114 to 12-116 (Mar. 3, 1901, ch. 854, §§ 236-239, 241, 243-246, 249-251, 31 Stat. 1227-1230; June 30, 1902, ch. 1329, 32 Stat. 528).

Sections 12-102, 12-103, 12-104, 12-105, 12-107 to 12-111, and 12-114 to 12-116 of D.C. Code, 1961 ed., are consolidated and rewritten to provide for the applicability of the Federal Rules of Civil Procedure to the substitution of parties in civil actions in the District Court and the Court of General Sessions. Although those rules would apply in the District Court in the absence of this section, it seems advisable to provide specifically by statute, with respect to the substitution of parties, for applicability of the rules, in view of the question which has arisen as to whether the time limitation in Rule 25(a) (1) for substitution after death of a party is a valid subject for a rule

of procedure. Compare *Perry v. Allen*, C.A. 5th 1956, 239 F. 2d 107, and *Foltz v. Moore-McCormack Lines, Inc.*, D.C.N.Y. 1956, 19 F.R.D. 301.

This section also makes the Federal rules applicable to the Court of General Sessions in such matters, because it is conceivable that the same question could arise with respect to Rule 25 of that court, which is patterned upon Rule 25 of the Federal rules, and which this section supersedes.

Section 12-102 of D.C. Code, 1961 ed., provided for substitution within 1 year of death of the defendant in an action at common law, except that the plaintiff had 6 months after the issuance of letters testamentary or of administration to make an executor or administrator of the deceased a party.

Section 12-103 of D.C. Code, 1961 ed., provided for substitution for a deceased plaintiff by the 4th day of the second term of the court after the term at which the death is suggested.

Section 12-104 of D.C. Code, 1961 ed., provided for a second substitution upon death of the substituted party or his removal as executor or administrator.

Section 12-105 of D.C. Code, 1961 ed., allowed the new party to use, rely upon, and amend the pleadings of his predecessor.

Section 12-107 of D.C. Code, 1961 ed., related to the death of one of several joint defendants.

Sections 12-108 to 12-111 of D.C. Code, 1961 ed., provided for substitution in case of death of parties in suits in equity.

Sections 12-114 to 12-116 of D.C. Code, 1961 ed., related to the measures for securing the appearance of the representative of a deceased party. These are covered by the provision of Rule 25(a) (1) that the motion for substitution shall be served upon persons who are not parties in the manner provided in Rule 4 for the service of a summons and may be served in any judicial district.

#### § 12-103. Judgment and costs in case of new party.

In all cases where a new party is made to an action, the costs which accrued before the new party was made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are parties to the action. A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of property or assets that have descended or come to his hands from the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-106 (Mar. 3, 1901, ch. 854, § 240, 31 Stat. 1229).

Changes are made in phraseology.

#### § 12-104. Marriage of party.

An action does not abate by the marriage of a party. On application of a party the court may, on such terms and notice as it deems proper, allow and order any amendment in the pleadings and the making of any new or additional parties that the marriage may render necessary or proper. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-112 (Mar. 3, 1901, ch. 854, § 247, 31 Stat. 1229).

Changes are made in phraseology.

## Chapter 3.—LIMITATION OF ACTIONS

Sec.

- 12-301. Limitation of time for bringing actions.
- 12-302. Disability of plaintiff.
- 12-303. Absence or concealment of defendant.
- 12-304. Actions stayed by court or statute.
- 12-305. Actions against decedents' estates.
- 12-306. Directions as to debts in a will.
- 12-307. Foreign judgments.
- 12-308. Actions by the United States.
- 12-309. Actions against District of Columbia for unliquidated damages—time for notice.

## § 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

- (1) for the recovery of lands, tenements, or hereditaments—15 years;
  - (2) for the recovery of personal property or damages for its unlawful detention—3 years;
  - (3) for the recovery of damages for an injury to real or personal property—3 years;
  - (4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment—1 year;
  - (5) for a statutory penalty or forfeiture—1 year;
  - (6) on an executor's or administrator's bond—5 years; on any other bond or single bill, covenant, or other instrument under seal—12 years;
  - (7) on a simple contract, express or implied—3 years;
  - (8) for which a limitation is not otherwise specially prescribed—3 years.
- (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12-201. For remainder of that section, see tables.

The exception at beginning of this section is inserted to make it clear that a limitation for a particular type of action found in any other provision of law would take precedence over the general limitations of this section.

Changes are made in phraseology and arrangement.

## CROSS REFERENCE

Adverse possession, period of limitation, see § 16-3301.  
Common carrier's liability for personal injuries or death of employee, commencement of action within 1 year, see § 44-404.

## Liens—

Fern and Varnum and Eastern Avenue viaduct, absence of limitation on action to recover part of cost, see § 7-515.

Hospital lien on moneys paid for personal injuries, limitation of enforcement action, see § 38-303.

Mechanics' liens, limitation of enforcement action, § 38-115.

Subways and viaducts to eliminate grade crossings, absence of limitation on actions to recover part of cost, see § 7-1215.

Quo warranto for damages for usurpation of office, commencement of action within 1 year, see § 16-3511.

Real estate salesmen's or broker's bond, commencement of action within 1 year, see § 45-1405.

## Taxation—

Income and franchise tax, limitation period upon assessment and collection, see § 47-1586i.

Income and franchise tax refunds, limitation period, § 47-1408.

Personal property taxes, limitation on collection, see § 47-1408.

Usury, commencement of action within 1 year, see § 28-2704.

## Wills—

Caveat within 1 year of probate decree, see § 19-309.

Testamentary directions respecting operation of statute of limitations to debts, see § 12-306.

## § 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

- (1) under 21 years of age; or
- (2) noncompos mentis; or
- (3) imprisoned—

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12-201.

For remainder of that section, see tables.

Changes are made in phraseology and arrangement.

## § 12-303. Absence or concealment of defendant.

(a) When a person who is a resident of the District of Columbia is out of the District or has absconded or concealed himself at the time a cause of action accrues against him, the period limited for the bringing of the action does not begin to run until he comes into the District or while he is so absconded or concealed.

(b) When such a person absconds or conceals himself after the cause of action accrues, the time of his absence or concealment may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-205 (Mar. 3, 1901, ch. 854, § 1269, 31 Stat. 1389).

Changes are made in phraseology and arrangement.

## § 12-304. Actions stayed by court or statute.

When the bringing of an action is stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of the stay may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-206 (Mar. 3, 1901, ch. 854, § 1270, 31 Stat. 1389).

Changes are made in phraseology.

## § 12-305. Actions against decedents' estates.

In an action against the estate of a deceased person, the interval, not exceeding two years, between the death of the deceased and the granting of letters testamentary or of administration may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-202 (Mar. 3, 1901, ch. 854, § 1266, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

## CROSS REFERENCE

Claims against estate, see § 18-518.

## § 12-306. Directions as to debts in a will.

A provision in the will of a testator devising his real estate, or part thereof, subject to the payment of his debts, or charging the same therewith, does not prevent the statute of limitations from operating against the debts, unless it plainly appears to be the testator's intention that it shall not so operate. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-207 (Mar. 3, 1901, ch. 854, § 1273, 31 Stat. 1390).

Changes are made in phraseology.

## CROSS REFERENCES

Decedents' estates—

Filing claim as tolling limitations, see § 18-514.

Plea of limitations within discretion of executor or administrator, see § 13-515.

Sale of real estate directed in will, see § 18-604.

## § 12-307. Foreign judgments.

An action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred

if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-203 (Mar. 3, 1901, ch. 854, § 1267, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

## § 12-308. Actions by the United States.

Sections 12-301, 12-302, 12-305, and 12-307 do not apply to an action in which the United States is the real and not merely the nominal plaintiff. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-204 (Mar. 3, 1901, ch. 854, § 1268, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

## § 12-309. Actions against District of Columbia for unliquidated damages—Time for notice.

An action may not be maintained against the District of Columbia for unliquidated damages to person of property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Board of Commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-208 (Feb. 28, 1933, ch. 138, 47 Stat. 1370).

Changes are made in phraseology.

## CROSS REFERENCE

Claims against District, see §§ 1-901 to 1-906.





## TITLE 13.—PROCEDURE GENERALLY

Chap.	Sec.	
1. Rules of Procedure.....	13-101	
3. Process and Parties.....	13-301	
5. Counterclaims .....	13-501	
7. Trial.....	13-701	

### Chapter 1.—RULES OF PROCEDURE

Sec.  
13-101. Prescription of rules by courts.

#### § 13-101. Prescription of rules by courts.

(a) The District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, and the Juvenile Court of the District of Columbia, respectively, shall prescribe rules to provide for the forms of process, writs, pleadings, motions, and practice and procedure in those courts, to provide for efficient administration of justice. Except as otherwise provided by this section, the rules, in the case of the District of Columbia Court of Appeals and the civil division of the Court of General Sessions, shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure, and, in the case of the Juvenile Court, the rules shall be enforced and construed beneficially for the remedial purposes embraced in chapter 15 of Title 11 and subchapter I of chapter 23 of Title 16.

(b) The judges of the Domestic Relations Branch of the Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the forms of process, writs, pleadings, motions, and practice and procedure in that Branch. Except as otherwise specifically provided by the rules prescribed, the applicable rules of the Federal Rules of Civil Procedure shall govern in the Branch.

(c) The Court of General Sessions shall prescribe rules to provide for a simple, inexpensive, and speedy procedure in the Small Claims and Conciliation Branch of that court to effectuate the purposes of chapter 39 of Title 16, and may prescribe, modify, and improve the forms to be used therein, from time to time, to insure the proper administration of justice and to accomplish the purposes of chapter 39 of Title 16.

(d) Rules adopted pursuant to this section by the District of Columbia Court of Appeals, the Court of General Sessions, and the Domestic Relations Branch of the Court of General Sessions may not abridge, enlarge, or modify the substantive rights of a litigant. (Dec. 23, 1963, 77 Stat. 512, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-756, 11-766, 11-771a, 11-774, 11-815, 11-930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 5, 1938, ch. 43, § 15, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 9, 56 Stat. 192, 193, 196; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Apr. 11, 1956, ch. 110, 70 Stat. 113;

July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 6, 77 Stat. 77, 78).

Section consolidates subsec. (b) of section 11-756, part of section 11-766, the first paragraph of subsec. (a) of section 11-774, section 11-815, and part of section 11-930, of D.C. Code, 1961 ed. For remainder of sections 11-756, 11-766, 11-774, and 11-930, see tables.

Sections 11-751a, 11-755, and 11-771a of D.C. Code, 1961 ed., are also cited as sources of this section, as (1) section 11-751a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (which had been formed from the merger, by the Act of Apr. 1, 1942, ch. 207, of the first Municipal Court with the Police Court) to the District of Columbia Court of General Sessions, (2) part of the first sentence of subsec. (a) of section 11-755, as amended by the Act of Oct. 23, 1962, continued both the Domestic Relations Branch and the Small Claims and Conciliation Branch (which had been established within the second Municipal Court by sections 11-758 and 11-801, respectively, of D.C. Code, 1961 ed.) within the Court of General Sessions, and (3) section 11-771a, also enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The identical provisions in section 11-756(b) and 11-774(a) of D. C. Code, 1961 ed., that, after September 16, 1938 (which was the date of adoption of the Federal Rules of Civil Procedure), all laws in conflict with the rules shall be of no further force or effect, are omitted as unnecessary, in view of the reconciliation or omission, in this revised Part, of statutes heretofore in conflict with rules adopted by the Municipal Court of Appeals and the Municipal Court (now, District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively).

Section 11-756(b) of D.C. Code, 1961 ed., which related to the Municipal Court (now, Court of General Sessions), contained the following proviso: "That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia [that is, the Municipal Court as it existed prior to its merger with the Police Court in 1942]; nor shall this subchapter and subchapter III [effecting the merger of the two courts, and creating the Municipal Court of Appeals, now, District of Columbia Court of Appeals] or any section thereof in any way repeal or modify the provisions of sections 11-801 to 11-820 [of the D.C. Code, 1961 ed.], establishing said small claims and conciliation branch". This proviso is omitted as no longer necessary. The separate provision (D.C. Code, 1961 ed., § 11-815) directing the prescription of separate rules for the Small Claims and Conciliation Branch of the Court of General Sessions is carried into this section, and the other provisions of section 11-801 et seq., of D.C. Code, 1961 ed., that related to the Small Claims and Conciliation Branch are also carried into this revised Part. Upon reenactment herein, they will stand on an equal basis.

Changes are made in phraseology.

### Chapter 3.—PROCESS AND PARTIES

#### SUBCHAPTER I.—GENERAL PROVISIONS

Sec.	
13-301.	Courts to which applicable.
13-302.	Service by marshal.
13-303.	Service or execution on Sunday.



## SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

Sec.

- 13-331. Service under other laws and rules of court.
- 13-332. Service on infants—Appointment and compensation of guardian and attorney.
- 13-333. Service on incompetent persons.
- 13-334. Service on foreign corporations.
- 13-335. Service by publication on domestic or foreign corporations.
- 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.
- 13-337. Personal service outside District in lieu of publication.
- 13-338. Prerequisites for order of publication.
- 13-339. Form of order of publication.
- 13-340. Manner of publication—Mailing of copy—Default—Appointment and compensation of guardian an attorney.
- 13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

## SUBCHAPTER I.—GENERAL PROVISIONS

### § 13-301. Courts to which applicable.

Except as otherwise specifically provided by law or rules of court, this chapter applies in all courts of the District of Columbia, including any branches of the courts. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-765 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 7, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates parts of sections 11-755(b) and 11-765. For remainder of those sections, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the Act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section has been completely rewritten to clarify the application of the provisions of this chapter on process.

The provisions of this chapter on the manner of service of process appeared in the 1901 Code under the subchapter on the former Supreme Court of the District of Columbia, which is now the United States District Court. But they were not by their terms limited to a particular court and since there were no provisions concerning manner of service of process issued by the justices of the peace, whose jurisdiction was taken over by the first Municipal Court, it seems probable that these provisions also applied in that court. Section 11-755(b) of D.C. Code, 1961 ed., provided that service of process in the civil division of the Municipal Court for the District of Columbia, created by the merger of the first Municipal Court and the Police Court in 1942, should be had as provided under existing law for such former Municipal Court, or in such other manner as might be prescribed by rules of court.

With respect to the Domestic Relations Branch of the Municipal Court (now, Court of General Sessions), section 11-765 of D.C. Code, 1961 ed., provided in part that service of process for the Domestic Relations Branch might be had by publication in the same manner as service of process was had by publication for the United States District Court for the District of Columbia.

As pointed out in the revision note under section 13-331 herein, the basic provisions governing process are found in the Federal Rules of Civil Procedure, which apply in the United States District Court, and in the rules of the other courts and branches which, under section 13-101 herein, are to conform as nearly as may be practicable to the Federal Rules of Civil Procedure.

Since this chapter is supplementary to the rules, this section makes the chapter applicable to all courts and branches, except as otherwise specifically provided by law or rules of court.

### § 13-302. Service by marshal.

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, including the Domestic Relations Branch thereof. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748, 11-751a, 11-755, 11-765, 11-771a, 11-774 (Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, §§ 4, 9, 56 Stat. 192, 196; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11-748 of the D.C. Code, 1961 ed., which related to service of process of the first Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court; that part of subsec. (b) of section 11-755 thereof which provided that service of process in the civil division of the court thus formed "shall be had as provided under existing law" for the Municipal Court prior to the merger, "or in such other manner as may be prescribed by rules of court"; the first sentence of section 11-765 thereof which, in connection with the Domestic Relations Branch of the second Municipal Court, likewise provided that service of process should be made by the United States marshal or his authorized assistants; and the second paragraph of subsec. (a) of section 11-774 thereof, which, with respect to the Municipal Court of Appeals (now, District of Columbia Court of Appeals), also provided for service of process by the United States marshal. For remainder of sections 11-748, 11-755, 11-765, and 11-774, see tables.

Sections 11-751a and 11-771a of D.C. Code, 1962 ed., both enacted by the Act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision of section 11-748 of D.C. Code, 1961 ed., that the coroner shall serve the process of the Municipal Court (now, Court of General Sessions) upon disqualification of the marshal, is omitted as obsolete or, in any event, unnecessary. It would seem that in such cases the process could be served by the marshal's deputies.

The opening phrase of this section is inserted to cover the provisions of the rules of court which permit service by persons appointed by the court and, in the case of subpoenas, by any persons over 21 years of age and not interested in the action. See Court of General Sessions Rules, Civil Rule 4(g).

### § 13-303. Service or execution on Sunday.

Except in cases of treason, felony, or breach of the peace, a writ, process, warrant, order, judgment, or decree may not be served or executed, or caused to be served or executed, on Sunday. Any such service or execution is void to all intents and purposes. A person who makes such a service or execution is liable to the aggrieved party to the same extent as if he had done it without a writ, process, warrant, order, judgment, or decree. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

## SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-102 (29 Car. 2, ch. 7, § 6, 1676; Kilty's Rept., p. 242; Alex. Br. Stat., p. 562; Comp. Stat., C.C., p. 451, § 54).

Changes are made in phraseology.



**§ 13-331. Service under other laws and rules of court.**

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

- (1) other law, including any other provisions of this Code; or
- (2) rule of court.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

**REVISION NOTES**

This section is inserted to make it clear that this chapter does not supersede any other methods of service authorized by other provisions of law and by rules of court.

The basic provisions governing the service of process are found in Rule 4 of the Federal Rules of Civil Procedure and the corresponding rules of the other courts. In some situations, however, these rules apply the federal statutes or the laws of the state (which includes the District of Columbia under Rule 81). Therefore, this chapter contains statutory provisions that were continued in effect by the rules.

There are also some federal statutes of general application that govern service of process in the District. The most important is 28 U.S.C. § 1655, providing for service on absent defendants in actions concerning real property.

Other provisions of this Code which are continued in effect by this section include chapter 9 of Title 29, relating to service on domestic and foreign business corporations; and section 40-423, concerning nonresident motorists.

**CROSS REFERENCES**

Attachment and garnishment proceedings, process in, see § 16-502.

Institutions of learning, service of process against, see § 29-412.

Insurance companies, service of process upon, see §§ 35-423, 35-601, 35-1327.

**FEDERAL RULES OF CIVIL PROCEDURE**

Issuance and service of summons, see Rule 4, U.S. Code, title 28, Appendix.

Summons, see Form 1, Appendix of Forms, U.S. Code, title 28, Appendix.

**§ 13-332. Service on infants—Appointment and compensation of guardian and attorney.**

(a) When an infant is a party defendant in an action, the summons and complaint shall be served upon him personally and, when he is under 16 years of age, upon the person with whom he resides, if within the District. The infant shall be produced in court unless, for cause shown, the court dispenses with his appearance. The provisions of rules of court regarding guardians ad litem apply, and whenever in the judgment of the court the interests of an infant defendant require it, the court shall assign an attorney to represent the infant whose compensation shall be paid by the plaintiff, or out of the estate of the infant, at the discretion of the court.

(b) An infant who secretes himself or evades service of process may be proceeded against as if he were a nonresident.

(c) Whoever secretes an infant against whom process has issued, so as to prevent service of the process, or prevents his appearance in court, is liable to attachment and punishment as for contempt. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 13-105, 13-106 (Mar. 3, 1901, ch. 854, §§ 102, 103, 31 Stat. 1205, 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

Section consolidates sections 13-105 and 13-106 of D.C. Code 1961 ed.

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an

infant in the manner prescribed by the law of the state.

In subsec. (a), the words "The provisions of rules of court regarding guardians ad litem shall apply" are substituted for the provisions of section 13-105 of D.C. Code, 1961 ed., for appointment of guardians ad litem for infants. See Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions, the latter being patterned upon the former. Under each rule, the court shall appoint a guardian ad litem or make such order as it deems proper for the infant's protection. See, also, Rule 1 of the Domestic Relations Branch of the Court of General Sessions, and Rule 27 of Small Claims and Conciliation Branch thereof, both of which provide that, insofar as applicable, the rules of the civil division shall govern in those branches, and the former of which provides that, insofar as applicable, the Federal Rules of Civil Procedure shall also govern in the Domestic Relations Branch. And see section 13-101 of this revised Part with respect to rules of the Court of General Sessions and its branches.

Further, under Rule 55(b)(2) of the Federal Rules of Civil Procedure, and Rule 55(b) of the rules of the Court of General Sessions (Part I, Civil Division), a default judgment may not be entered against an infant unless he is represented in the action by a general guardian or other representative who has appeared therein.

Changes are made in phraseology.

**CROSS REFERENCES**

Guardians ad litem—

Insanitary buildings, condemnation proceedings, see § 5-624.

Parks and playgrounds, land for, see § 1-1011.

Streets, land for, see § 7-204.

**FEDERAL RULES OF CIVIL PROCEDURE**

Process, see Rule 4, U.S. Code, Title 28, Appendix.

**§ 13-333. Service on incompetent persons.**

When a person non compos mentis is a party defendant in an action, process shall be served upon him personally, if within the District, and upon his committee, if there is one within the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 13-107 (Mar. 3, 1901, ch. 854, § 104, 31 Stat. 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an incompetent person in the manner provided by the law of the State, and Rule 4(c)(2) of the civil rules of the Court of General Sessions, which requires service on an incompetent person in the manner provided by law.

The provision of section 13-107 of D.C. Code, 1961 ed., for appointment of a guardian ad litem is omitted as covered by Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

**CROSS REFERENCES**

Guardians ad litem—

Insanitary buildings, condemnation proceedings, see § 5-624.

Parks and playgrounds, land for, see § 1-1011.

Streets, land for, see § 7-204.

Service of process on inmates of the District Training School, see § 32-627.

Summons in feeble-minded inquest, see § 32-609.

**FEDERAL RULES OF CIVIL PROCEDURE**

Process, see Rule 4, U.S. Code, Title 28, Appendix.

**§ 13-334. Service on foreign corporations.**

(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of



business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employe of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-103 (Mar. 3, 1901, ch. 854, § 1537, 31 Stat. 1419; June 30, 1902, ch. 1329, 32 Stat. 544; Feb. 1, 1907, ch. 445, 34 Stat. 874).

This method of service on foreign corporations is an alternative to the method provided by Rule 4(d) (3) of the Federal Rules of Civil Procedure, and is authorized by Rule 4(d) (7).

Another method of service on foreign corporations is found in chapter 9 of Title 29 of the D.C. Code, 1961 ed. Changes are made in phraseology.

### § 13-335. Service by publication on domestic or foreign corporations.

In an action specified by section 13-336, when process can not be served upon a domestic or foreign corporation, the corporation may be proceeded against as a nonresident defendant, by notice by publication. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-104 (Mar. 3, 1901, ch. 854, § 112, 31 Stat. 1207).

A provision is inserted limiting the section to actions specified in section 13-336, because of the decision in *United States v. Matthews*, C.A.D.C. 1955, 221 F. 2d 837, that this section is so limited and does not apply in actions in personam.

Other methods of service on domestic and foreign corporations are found in chapter 9 of Title 29 of the D.C. Code, 1961 ed.

Changes are made in phraseology.

### § 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.

(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process upon a defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons.

(b) This section applies only to:

- (1) actions for partition;
- (2) actions for divorce or annulment;
- (3) actions by attachment;
- (4) actions for foreclosure of mortgages and deeds of trust;
- (5) actions for the establishment of title to real estate by possession;
- (6) actions for the enforcement of mechanics' liens, and other liens against real or personal property within the District; and
- (7) actions that have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real

or personal property within the jurisdiction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13-108. For remainder of that section, see section 13-337 herein.

The provisions of this chapter on service other than personal service are statutes of the United States that are applicable under Rule 4(e) of the Federal Rules of Civil Procedure.

Other provisions for service on absent defendants in actions concerning property are found in 28 U.S.C. § 1655.

Changes are made in phraseology and arrangement.

#### CROSS REFERENCE

Service of process on nonresident owner of motor vehicles, see, § 40-423.

### § 13-337. Personal service outside District in lieu of publication.

(a) In actions specified by section 13-336, personal service of process may be made on a nonresident defendant out of the District, and the service has the same effect, and no other, as an order of publication duly executed.

(b) The service may be made by any person not a party to or otherwise interested in the subject-matter in controversy. The return shall be made under oath in the District of Columbia, unless the person making the service is a sheriff, deputy sheriff, marshal, or deputy marshal, authorized to serve process where service is made. The return must show the time and place of service and that the defendant so served is a nonresident of the District of Columbia.

(c) The cost and expense of such service of process out of the District shall be borne by the party at whose instance it is made and may not be taxed as part of the costs in the case; but where the service of process is made by an authorized officer of the law specified by this section, the actual and usual cost of the service of process shall be taxed as a part of the costs in the case. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13-108. For remainder of that section, see section 13-336 herein.

Changes are made in phraseology and arrangement.

### § 13-338. Prerequisites for order of publication.

An order for the substitution of publication for personal service may not be made until:

- (1) a summons for the defendant has been issued and returned "Not to be found," and
  - (2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court.
- (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 13-109 (Mar. 3, 1901, ch. 854, § 106, 31 Stat. 1206).

Changes are made in phraseology.

**§ 13-339. Form of order of publication.**

An order of publication shall be in the following or an equivalent form:

United States District Court for the District of  
Columbia.

AB, plaintiff, } In \_\_\_\_\_. No. \_\_\_\_\_  
versus  
CD, defendant. }

The object of this action is to (state it briefly).

On motion of the plaintiff, it is this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

\_\_\_\_\_  
Judge.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 13-110 (Mar. 3, 1901, ch. 854, § 107, 31 Stat. 1206; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a) (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

This form is made to conform to present terms and procedure by changing "complainant" to "plaintiff", and "suit" to "action".

**§ 13-340. Manner of publication—Mailing of copy—Default—Appointment and compensation of guardian and attorney.**

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement, directed to the party therein ordered to appear, at his last known place of residence, or that after diligent effort he has been unable to ascertain the last place of residence of the party.

(c) On failure of the defendant to appear in obedience to the notice within the time stated therein, a judgment or decree by default may be entered.

(d) If the absent or nonresident defendant is an infant, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court may assign counsel to represent the infant in the manner provided by subsection (a) of section 13-332.

(e) If the absent or nonresident defendant is non compos mentis, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court shall assign an attorney to represent the defendant, whose compensation shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court. (Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 13-111, 13-112 (Mar. 3, 1901, ch. 854, §§ 108, 109, 31 Stat. 1206, 1207; June 30, 1902, ch. 1329, 32 Stat. 523).

In subssecs. (d) and (e), the provisions making applicable the provisions of the rules of the court concerning guardians ad litem and default judgments are substituted for the provision in section 13-111 of D.C. Code, 1961 ed., that, with respect to an infant, the court shall appoint a guardian ad litem, and for the provision in section 13-112 thereof, that, with respect to a defendant non compos mentis, "no decree or judgment shall be passed unless the cause is fully proved". For example, Rules 17(c) and 55(b) (2) of the Federal Rules of Civil Procedure, and corresponding rules in other courts (see Rules 17(b) and 55(b) of the civil rules of the Court of General Sessions) govern the appointment of guardians ad litem for infants and incompetent persons, and provide that a judgment shall not be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other representative who has appeared therein.

Changes are made in phraseology.

**§ 13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.**

(a) When a person would be a proper party to a judicial proceeding if living, and upon allegation under oath and proof satisfactory to the court that it is unknown whether he is living or dead, he may be proceeded against as if he were living, and with like effect, if a representative of or claimant under him does not intervene in the action before final determination thereof, after notice by publication as in the case of nonresident parties.

(b) When a person who would have been a proper party to a judicial proceeding is dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees are unknown, the unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party. Notice shall be given by publication to them according to that description, and the same proceedings shall be had against them as are had against nonresident defendants, except that:

(1) the notice shall be published at least twice a month for such period, not less than three months without good cause shown, as the court orders, and the notice shall require the parties to appear on or before the day fixed in the notice to appear; and

(2) an order, judgment or decree may not be entered against the parties unless the court is satisfied that due diligence has been used to ascertain the unknown heirs.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 13-113 (Mar. 3, 1901, ch. 854, § 110, 31 Stat. 1207; June 30, 1902, ch. 1329, 32 Stat. 524).

In par. (1) of subsec. (b), words "on or before the day fixed in the notice to appear" are substituted for "on or before the first rule day occurring after the expiration of such prescribed period". Under present local court practice, rule days have been abolished.

Changes are made in phraseology.

**Chapter 5.—COUNTERCLAIMS**

Sec.

13-501. Counterclaim by way of set-off as an action by defendant.

13-502. Effect of assignment.

13-503. Action against principal and sureties.

13-504. Action by trustee.

13-505. Action by or against executor or administrator.



### § 13-501. Counterclaim by way of set-off as an action by defendant.

In a civil action, a defendant who files a counterclaim by way of set-off shall be deemed to have brought an action at the time of filing the counterclaim for the matters mentioned therein. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1903 (Mar. 3, 1901, ch. 854, § 1565, 31 Stat. 1423; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "counterclaim by way of set-off" are substituted for "plea of set-off", and, in another place, "counterclaim" is substituted for "plea", to conform with court procedural rules. See Rule 13 of the Federal Rules of Civil Procedure, and Rule 13 of the civil rules of the Court of General Sessions, the latter being patterned upon the former. In the first substitution referred to, the reference to "set-off", although not used in the rules mentioned, is retained to restrict the scope of this section to that contemplated by section 16-1903 of D.C. Code, 1961 ed., from which this section is derived. Apparently, section 16-1903 barred the set-off if the statute of limitations had run after plaintiff had brought his action but before defendant had filed the plea of set-off; but it had no effect on the filing of a plea of recoupment, which was a common-law right, in contrast with set-off, which was strictly a statutory right. The general rule for recoupment was that if plaintiff's action was timely, so was the defendant's plea of recoupment, since the recoupment claim, as distinguished from a claim of set-off, arose from the same general contract. See *Durant v. Murdock*, 3 App. D.C. (1894) 114, 124-125; *Sullivan v. Hoover* (D.D.C. 1947), F.R.D. 513.

The provision "but it shall not be necessary that the amount of the claim so sought to be set off shall be such that the court would have jurisdiction of an original action to recover the same" is omitted as obsolete. See sections 11-961(a)(b)(3) and 11-962 herein. For the same reason, the proviso at the end of section 16-1903 of D.C. Code, 1961 ed., "Provided, that nothing herein contained shall be construed to enlarge the jurisdiction of the municipal court so as to authorize any judgment by such court in excess of one thousand dollars exclusive of interest and costs" is omitted.

Section 16-1903 of D.C. Code, 1961 ed., also contained the following provisions: "and the plaintiff shall not thereafter be allowed to dismiss his suit without the consent of the defendant, but the defendant shall be entitled to a trial of and judgment upon his claim, but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; and on the trial of an issue on said plea of set-off judgment shall be rendered for the balance found due, whether to the plaintiff or to the defendant, with costs". These provisions are omitted as superseded by the Federal Rules of Civil Procedure, and the Rules of the Court of General Sessions. See, particularly, rules 7(a), 12(b), 13, 41(a)(2)(c), 42(b), and 54(b) of the former, and the identically numbered rules in Section I of the latter.

Changes are made in phraseology.

### § 13-502. Effect of assignment.

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of a nonnegotiable debt the defendant may set off by counterclaim any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1904 (Mar. 3, 1901, ch. 854, § 1566, 31 Stat. 1423).

In one place words "by counterclaim" are inserted after "set-off", in conformity with the Federal Rules of Civil Procedure and the Rules of the Court of General Sessions. See, for example, rule 13 of the former and the identically numbered rule in Section I of the latter.

For inapplicability of this section to negotiable instruments, see *Lincoln v. Grant* (47 App. D.C. 475).

Changes are made in phraseology.

### § 13-503. Action against principal and sureties.

In an action against principal and sureties, an indebtedness of the plaintiff to the principal may be set off by counterclaim as if he were the sole defendant. When the indebtedness so set off exceeds the plaintiff's demand, the judgment for the excess shall be in favor of the defendant who is sued as principal. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1906 (Mar. 3, 1901, ch. 854, § 1568, 31 Stat. 1423).

Words "by counterclaim" are inserted after the first "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The provisions of sections 16-1906 to 16-1908 of D.C. Code, 1961 ed., are carried into and preserved in this section and sections 13-504 and 13-505 herein because, while rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions provide for counterclaims between opposing parties in civil actions, they do not define "opposing party", as used therein. With respect to the types of parties referred to in these three sections, the sections may be considered as supplemental to those rules.

Changes are made in phraseology.

### § 13-504. Action by trustee.

When the plaintiff in a civil action is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff may not be pleaded by way of counterclaim, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1907 (Mar. 3, 1901, ch. 854, § 1569, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rules in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13-503 herein.

Changes are made in phraseology.

### § 13-505. Action by or against executor or administrator.

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of counterclaim, a demand belonging to the decedent where he would have been entitled to rely upon the demand in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of counterclaim, as if the action had been brought by the decedent in his lifetime. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1908 (Mar. 3, 1901, ch. 854, § 1570, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off" in two places, in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13-503 herein.

A minor change is made in phraseology.

## Chapter 7.—TRIAL

Sec.

13-701. Special juries in District Court.

13-702. Jury trials in civil cases in Court of General Sessions.

## § 13-701. Special juries in District Court.

(a) In a case, civil or criminal, called for trial in the United States District Court for the District of Columbia, in which either party desires a special or struck jury, the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the list to each of the parties. Each party or his counsel may strike off the names of four persons from the list, and the persons whose names remain on the list shall thereupon be impaneled and sworn as the petit jury in the case. If either party or his counsel neglects or refuses to strike from the list the number of names authorized by this subsection, the clerk may strike off the names, and the twelve persons whose names remain on the list shall be impaneled as the petit jury in the case.

(b) If the proceeding authorized by subsection (a) of this section is not insisted upon by either party, either party may furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the case, and the clerk, in making up the panel, shall omit the jurors to whom objection was so made.

(c) This section does not deprive a person of the right to challenge the array or polls of a panel returned, or to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in a particular case. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-319 (Mar. 3, 1901, ch. 854, § 72, 31 Stat. 1201; June 30, 1902, ch. 1329, 32 Stat. 523).

Words "civil or criminal" are inserted to make it clear that this section applies to both types of cases.

Changes are made in phraseology.

## CROSS REFERENCE

Additional peremptory challenges, see U.S. Code, Title 28, § 1870.

## § 13-702. Jury trials in civil cases in Court of General Sessions.

When the amount in controversy in a civil action pending in the District of Columbia Court of General Sessions exceeds \$20, and in all actions for the recovery of possession of real property, either party shall be entitled to a trial by jury, if he demands it in the manner provided by rules of the court. In such a case tried by jury, the trial judge shall conduct the jury trial and according to the practice and procedure in the United States District Court for the District of Columbia, and has the same power to instruct juries, set aside verdicts, arrest judgments, and grant new trials as judges of that court. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-715, 11-751a, 11-755 (Mar. 3, 1921, ch. 125, § 3, 41 Stat. 1310; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 8-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section 11-715 of D.C. Code, 1961 ed., related to the Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court. Prior to its amendment by the act of Oct. 23, 1862, subsec. (a) of section 11-755 of the Code provided that the court thus established and the judges thereof should have the same jurisdiction and powers theretofore vested in the two former courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11-755 provided that the Court of General Sessions and the judges thereof should have the same jurisdiction and powers theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court) and the judges thereof. Section 11-751a of D.C. Code, 1961 ed., enacted by the 1962 act, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For remainder of section 11-755 of D.C. Code, 1961 ed., see tables.

In the first sentence of this section, the phrase (with respect to demand for jury trial) "in the manner provided by rules of the court", is inserted for the purpose of completeness. See the following rules of the Rules of the Court: Civil Rules, rule 38; Landlord and Tenant Rules, rule 7; Small Claims Rules, rule 17.

Changes are made in phraseology.

The provisions of sections 11-818 and 11-915 and 11-936 (first clause) of D.C. Code, 1961 ed., relating to jury trials in the Small Claims and Conciliation Branch of the court (11-818) and the Juvenile Court (11-915 and 11-936) are carried into those chapters herein dealing with procedure in that branch and that court.

The provisions of 11-715a and 11-716a (first clause) of D.C. Code, 1961 ed., relating to jury trials in criminal cases in the court are carried into chapter 7 of Title 16 herein relating to criminal procedure in the court.





## TITLE 14.—PROOF

### CHAP.

1. Evidence Generally—Depositions .....	14-101
3. Competency of Witnesses.....	14-301
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### Chapter 1.—EVIDENCE GENERALLY— DEPOSITIONS

#### Sec.

14-101. Evidence under oath—Affirmation in lieu of oath—Perjury.
14-102. Impeachment of own witness—Surprise.
14-103. Depositions for use in State and Territorial Courts.
14-104. Testimony of nonresident witnesses for use in Court of General Sessions.

#### § 14-101. Evidence under oath—Affirmation in lieu of oath—Perjury.

(a) All evidence shall be given under oath according to the forms of the common law.

(b) A witness who has conscientious scruples against taking an oath, may, in lieu thereof, solemnly, sincerely, and truly declare and affirm. Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.

(c) Whoever swears, affirms, declares, or gives testimony in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury in a case where he would be guilty of that crime if sworn according to the forms of the common law. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 14-101, 14-102 (Mar. 3, 1901, ch. 854, §§ 1056, 1057, 31 Stat. 1354).

Section consolidates sections 14-101 and 14-102 of the D.C. Code, 1961 ed.

Manner of taking testimony, see Rule 43(a) of the Federal Rules of Civil Procedure and Rule 26 of the Federal Rules of Criminal Procedure.

Provisions similar to subsec. (b) of this section relating to affirmations are found in Rule 43(d) of the Federal Rules of Civil Procedure and Rule 43(c) of the Court of General Sessions Civil Rules. Oath as including affirmation, see section 49-206 of the D.C. Code, 1961 ed., and 1 U.S.C. § 1.

Changes are made in phraseology.

#### CROSS REFERENCE

Immunity of witnesses testifying in prostitution cases, see § 22-271.

#### § 14-102. Impeachment of own witness—Surprise.

When the court is satisfied that the party producing a witness has been taken by surprise by the testimony of the witness, it may allow the party to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to the party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause. Before such proof is given, the circumstances of the supposed statement sufficient

to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made the statements and if so allowed to explain them. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-104 (June 30, 1902, ch. 1329, § 1073a, 32 Stat. 540).

Rules 43 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively, relate to the scope of examination and cross-examination of witnesses but do not cover the subject of impeachment by proof of contradictory statements.

This section is consistent with Rule 26 of the Federal Rules of Criminal Procedure because it merely codifies the established rule.

See *Wheeler v. U.S.* 1953, 93 U.S. App. D.C. 159, 211 F. 2d 19.

Changes are made in phraseology

#### § 14-103. Depositions for use in State and Territorial Courts.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-204 (Mar. 3, 1901, ch. 854 § 1062, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 139, 63 Stat. 109).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico.

Depositions for use in foreign countries are covered by 28 U.S.C. § 1782. Depositions generally are covered by Rules 26 et seq. and 45 of the Federal Rules of Civil Procedure and Rule 26 et seq. of the Civil Rules of the Court of General Sessions, which superseded sections 14-103 and 14-201 to 14-203 of D.C. Code, 1961 ed.

Minor changes are made in phraseology.

#### CROSS REFERENCES

##### Depositions—

Criminal cases, see §§ 23-111, 23-112.

Probate court, see § 16-3111.

#### § 14-104. Testimony of nonresident witnesses for use in Court of General Sessions.

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the District of Columbia Court of General Sessions the Court, upon motion designating the names of the witnesses, may appoint an examiner to take their testimony, to whom it shall issue a commission. The testimony shall be taken on written interrogatories and cross-interrogatories. The written interrogatories must be filed at least three days before the issuance of the commission. The



commission shall not issue unless the party or his agent or attorney applying therefor file his affidavit, setting forth that he believes that the testimony of the witnesses is material to the issue in the action or proceeding and that the motion is not made for the purpose of delay. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-741, 11-751a, 11-755 (Mar. 3, 1901, ch. 854, § 26, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 67 Stat. 103; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11-741 of D.C. Code, 1961 ed. (from which the text of this section is derived), which related to the first Municipal Court, with that part of section 11-755(a) thereof, which, in connection with the merger, in 1942, of the first Municipal Court and the former Police Court, to form the second Municipal Court, provided, prior to its amendment by the act of Oct. 23, 1962, that the second Municipal Court and the judges thereof should have and exercise the same powers and jurisdiction theretofore had or exercised by the two former courts. After the 1962 amendment, subsec. (a) of section 11-755 vested in the Court of General Sessions and the judges thereof the same powers and jurisdiction theretofore vested in the second Municipal Court and the judges thereof.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For additional provisions relating to depositions to be used in the Court of General Sessions, see Rule 26 et seq. (particularly Rule 28) of the civil rules of that court. See, also, section 13-101(a) of this revised part, which requires that the procedural rules prescribed by the Court of General Sessions for its Civil Division "shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure". That provision is derived from section 11-756(b) of D.C. Code, 1961 ed.

Changes are made in phraseology.

### Chapter 3.—COMPETENCY OF WITNESSES

Sec.

- 14-301. Parties and other interested persons generally.
- 14-302. Testimony against deceased or incapable person.
- 14-303. Testimony of deceased or incapable person.
- 14-304. Death or incapacity of partner or other interested persons.
- 14-305. Conviction of crime.
- 14-306. Husband and wife.
- 14-307. Physicians.
- 14-308. Assessment officials as expert witnesses in condemnation proceedings.
- 14-309. Clergy.

#### § 14-301. Parties and other interested persons generally.

Except as otherwise provided by law, a person is not incompetent to testify in a civil action or proceeding by reason of his being a party thereto or interested in the result thereof. If otherwise competent to testify, he is competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to the action or proceeding. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-301 (Mar. 3, 1901, ch. 854, § 1063, 31 Stat. 1357).

The provisions of this chapter on competency of witnesses are still effective under Rule 43(a) of the Federal Rules of Civil Procedure, which provides, in part: "All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner." For the meaning of "state" and "statute of the United States" as applied to the District of Columbia, see Rule 81(c).

Changes are made in phraseology.

#### § 14-302. Testimony against deceased or incapable person.

(a) In a civil action against:

(1) a person who, from any cause, is legally incapable of testifying, or

(2) the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of a person so incapable of testifying,

a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with, or action, declaration or admission of, the deceased or incapable person.

(b) In an action specified by subsection (a) of this section, if the plaintiff or his agent, servant, or employee, testifies as to any transaction with, or action, declaration, or admission of, the deceased or incapable person, an entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon his personal knowledge, may not be excluded as hearsay. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-302 (Mar. 3, 1901, ch. 854, § 1064, 31 Stat. 1357; Apr. 19, 1920, ch. 153, 41 Stat. 567; June 24, 1948, ch. 609, 62 Stat. 579).

Changes are made in arrangement and phraseology.

#### § 14-303. Testimony of deceased or incapable person.

When a party, after having testified at a time while he was competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such a case the opposite party may testify in opposition thereto. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-303 (Mar. 3, 1901, ch. 854, § 1065, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Words "insane or otherwise" preceding "incapable" are omitted as covered by "incapable".

Changes are made in phraseology.

#### § 14-304. Death or incapacity of partner or other interested person.

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly en-

titled or liable, and some of them have died or become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, are not, nor is the adverse party, incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or become incapable of testifying. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-304 (Mar. 3, 1901, ch. 854, § 1066, 31 Stat. 1357).

Changes are made in phraseology.

### § 14-305. Conviction of crime.

A person is not incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime. The fact of conviction may be given in evidence to affect his credibility as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him is not bound by his answers as to such matters. To prove the conviction of crime the certificate, under seal, of the clerk of the court wherein proceedings containing the conviction were had, stating the fact of the conviction and for what cause, is sufficient. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-305 (Mar. 3, 1901, ch. 854, § 1067, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Changes are made in phraseology.

### § 14-306. Husband and wife.

(a) In civil and criminal proceedings, a husband or his wife is competent but not compellable to testify for or against the other.

(b) In civil and criminal proceedings, a husband or his wife is not competent to testify as to any confidential communications made by one to the other during the marriage. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 14-306, 14-307 (Mar. 3, 1901, ch. 854, §§ 1068, 1069, 31 Stat. 1358).

Section consolidates sections 14-306 and 14-307 of the D.C. Code, 1951 ed.

Changes are made in phraseology.

#### CROSS REFERENCE

Confidential communications between husband and wife in criminal prosecutions for non-support, see § 22-904.

### § 14-307. Physicians.

(a) In the courts of the District of Columbia a physician or surgeon may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a patient in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the patient or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or

inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice; or

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-308 (Mar. 25, 1896, ch. 245, 29 Stat. 138; Mar. 3, 1901, ch. 854, §§ 1073, 1636, 31 Stat. 1358, 1434; Aug. 9, 1955, ch. 673, § 4, 69 Stat. 612).

The privilege granted by this section is subject to waiver in discovery proceedings for physical and mental examination of persons under Rule 35 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively.

Changes are made in phraseology.

### § 14-308. Assessment officials as expert witnesses in condemnation proceedings.

In an action for the condemnation of lands, an official or other employee of the District, charged with the duty of appraising real property for assessment purposes, is not disqualified, by reason of the fact that he is so employed, from testifying as an expert witness to the market value of lands, and as to benefits. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-309 (Feb. 11, 1932, ch. 39, 47 Stat. 48).

Section 14-309 of D.C. Code, 1961 ed., referred to the Assessor of the District; but in this section the provisions are revised to refer to "an official or other employee of the District, charged with the duty of appraising real property for assessment purposes". Reorganization Order No. 20, Nov. 10, 1952, as amended, of the Board of Commissioners, abolished the Office of the Assessor, and among other things provided that the Finance Officer, whose office it created, should be the Assessor and the head of a new Office of the Assessor also created thereby as one of several offices set up within the Finance Office. Under the Board's Reorganization Order No. 121, 57-3276, dated Dec. 12, 1957, as amended, which, like Reorganization Order No. 20, was issued under authority of the President's Reorganization Plan No. 5 of 1952, and which superseded Reorganization No. 20, as amended, the appraisement of real property for assessment purposes is one of the functions of the Property Tax Division, one of several divisions set up by Order No. 121 within the Finance Office, all under the general supervision and control of the Finance Officer. Order No. 121, does not provide that the Finance Officer shall be the "Assessor". However, the Board of Commissioners has the authority, under the President's Reorganization Plan No. 5 of 1952, referred to above, to change offices and functions at any time, and, under Reorganization Order No. 121, also referred to above, the Finance Officer has the authority to reassign functions. For these reasons, the provisions of this section are rephrased in the general terms quoted above.

Other changes are made in phraseology.

### § 14-309. Clergy.

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the courts of the District of Columbia with respect to any—



(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-310 (Sept. 26, 1961, Pub. L. 87-318, 75 Stat. 681).

Changes are made in phraseology.

### CHAPTER 5.—DOCUMENTARY EVIDENCE

#### Sec.

14-501. Proof of record.

14-502. Records of deeds, instruments, and wills.

14-503. Record of will as prima facie evidence of contents and execution.

14-504. Force in District of Columbia of wills probated elsewhere.

14-505. Municipal ordinances and regulations.

14-506. Certified mail return receipts as prima facie evidence of delivery.

14-507. Other methods of proof.

#### § 14-501. Proof of record.

An exemplification of a record under the hand of the keeper of the record, and the seal of the court or office where the record is made, is good and sufficient evidence to prove a record made or entered in any State, territory, commonwealth or possession of the United States. The certificate of the person purporting to be the keeper of the record, accompanied by the seal, is prima facie evidence of that fact. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-501 (Mar. 3, 1901, ch. 854, § 1070, 31 Stat. 1358).

The methods of proof in this chapter are additional to those authorized by other laws and rules of court; see section 14-506 herein.

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

#### CROSS REFERENCES

Articles of association of fraternal benefit association as prima facie evidence of existence and due incorporation, see § 35-909.

Authentication of papers by superintendent of insurance, effect, see § 35-401.

Certified copies of certificate of incorporation presumptive evidence of facts therein stated, see § 29-236.

Corporate stock books presumptive evidence of fact contained therein, see § 29-226.

Stock book of domestic life insurance company presumptive evidence of facts therein contained, see § 35-515.

Transcribed copy of proceedings before public utilities commission admissible as evidence, see § 43-421.

Upon division of insurance business of fraternal benefit association, original policies prima facie evidence of liability of successor corporation, see § 35-925.

#### FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see Rule 44, U.S. Code, Title 28, Appendix.

#### § 14-502. Records of deeds, instruments, and wills.

Under the hand of the keeper of a record and the seal of the court or office in which the record was made:

(1) a copy of the record of a deed, or other written instrument not of a testamentary character, where the laws of the State, territory, commonwealth, possession or country where it was recorded require such a record, and that has been recorded agreeably to those laws; and

(2) a copy of a will that the laws require to be admitted to probate and record by judicial decree, and of the decree of the court admitting the will to probate and record—

are good and sufficient prima facie evidence to prove the existence and contents of the deed, will, or other written instrument, and that it was executed as it purports to have been executed.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-402 (Mar. 3, 1901, ch. 854, § 1071, 31 Stat. 1358).

In par. (1), reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in arrangement and phraseology.

#### CROSS REFERENCES

Certain irregular deeds legalized, see § 45-504.

Transcript of surveyor's records, see § 1-611.

#### § 14-503. Record of will as prima facie evidence of contents and execution.

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by the United States District Court for the District of Columbia, or by the former orphans' court of the District, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-403 (July 9, 1888, ch. 597, 25 Stat. 246; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

#### § 14-504. Force in District of Columbia of wills probated elsewhere.

A record in the office of the Register of Wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting a will or codicil to probate outside of the District of Columbia; and a record in that office of a will or codicil admitted to probate in the District before June 8, 1898, and not annulled or declared void according to law prior to June 8, 1898, shall be deemed and held as of the same force and effect as if the will or codicil had been duly proved and admitted to probate and record pursuant to sections 19-301 to 19-303. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-404 (June 8, 1898, ch. 394, § 10, 30 Stat. 437).

Changes are made in phraseology.

## § 14-505. Municipal ordinances and regulations.

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified by the secretary or an assistant secretary of the Board of Commissioners; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-406 (Apr. 19, 1920, ch. 153, § 1073b, 41 Stat. 567).

Changes are made in phraseology.

## § 14-506. Certified mail return receipts as prima facie evidence of delivery.

Return receipts for the delivery of certified mail which is utilized under any provision of law shall be received in the courts as prima facie evidence of delivery to the same extent as return receipts for registered mail. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-407 (June 11, 1960, Pub. L. 86-507, § 2, 74 Stat. 204).

Section 2 of the act of June 11, 1960, cited above, which was classified as section 14-407 of D.C. Code, 1961 ed., also relates to courts outside the District of Columbia. Hence, it is not included in the schedule of repeals in the bill to enact this revised part.

## § 14-507. Other methods of proof.

This chapter does not prevent the proof of records or other documents by any method authorized by other laws or rules of court. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

## REVISION NOTES

This section is inserted to make it clear that the methods of proof provided for by this chapter are additional to, and do not supersede, the methods authorized by 28 U.S.C. §§ 1731-1745; Rule 44, respectively, of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules; Rule 27 of the Federal Rules of Criminal Procedure; Rule 30 of the Court of General Sessions Criminal Rules; and any other provisions of the D.C. Code on this subject.

## Chapter 7.—ABSENCE FOR SEVEN YEARS

14-701. Presumption of death.

14-702. Person presumed dead found living.

## § 14-701. Presumption of death.

If a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from the time of his so leaving, he shall be presumed to be dead in any case where his death is in question, unless proof is made that he was alive within that time. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1951 ed., § 14-401 (Mar. 3, 1901, ch. 854, § 252, 31 Stat. 1230).

Changes are made in phraseology.

## CROSS REFERENCES

Administration of estates of absentees and absconders, see § 20-701 et seq.

## § 14-702. Person presumed dead found living.

If the person presumed to be dead pursuant to section 14-701 is found to be living, a person injured by the presumption shall be restored to the rights of which he was deprived by reason of the presumption. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 14-502 (Mar. 3, 1901, ch. 854, § 253, 31 Stat. 1230).

Changes are made in phraseology.





## TITLE 15.—JUDGMENTS AND EXECUTIONS—FEES AND COSTS

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### Chapter 1.—JUDGMENTS AND DECREES

#### SUBCHAPTER I.—GENERALLY

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15-102.	Lien of judgment, decree, or forfeited recognition.
15-103.	Effect of revival.
15-104.	Priority of liens.
15-105.	Decree confirming sale of property—Effect—Ordering conveyance.
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#### SUBCHAPTER II.—COURT OF GENERAL SESSIONS

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#### SUBCHAPTER I.—GENERALLY

##### § 15-101. Enforceable period of judgments—Expiration.

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the:

(1) United States District Court for the District of Columbia; or

(2) civil division of the District of Columbia Court of General Sessions, when certified to and docketed in the clerk's office of the District Court—  
is enforceable, by an execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then pending for the enforcement of the judgment or decree, action may not be brought on it, nor may it be revived, and execution may not issue on it. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§11-751a, 15-101, 15-102, (Mar. 3, 1901, ch. 854, §§ 1212, 1213, 31 Stat. 1381; June 30, 1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch.

646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates sections 15-101 and 15-102 of the D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "final judgment or final decree" are substituted in subsec. (a) for the reference in section 15-101 of the D.C. Code, 1961 ed., to final judgment "at common law" and final decree "in equity" as, in civil matters, there is now only one form of action in the District Court and in the Court of General Sessions, known as a "civil action". See Rule 2 of the Federal Rules of Civil Procedure and Rule 2 of the civil rules of the Rules of the Court of General Sessions.

In subsec. (a), words "or from the date of the last order of revival thereof" are substituted for words in section 15-101 of D.C. Code, 1961 ed., "or from the date of the last revival thereof under scire facias". The writ of scire facias was abolished, with respect to all district courts, by Rule 81(b) of the Federal Rules of Civil Procedure, which further provides that the relief theretofore available by scire facias may be obtained by appropriate action or motion under the practice prescribed in those rules. In the United States District Court for the District of Columbia, a judgment may be revived by motion and hearing. See Rule 30 of that Court's local civil rules.

For the same reason as given above words "nor may it be revived" are, in subsec. (b), substituted for "nor any scire facias [issued]" which appeared in section 15-102 of D.C. Code, 1961 ed.

When sections 15-101 and 15-102 of D.C. Code, 1961 ed., were enacted in 1901, the reference in section 15-101 to the municipal court read "justice of the peace court". The act of 1909, cited above, changed the name to "municipal court". The court continued to have civil jurisdiction only until its merger in 1942 with the Police Court. Now (as the Court of General Sessions), it has a civil division and a criminal division. Therefore, for the purpose of clarity, in clause (2) of subsec. (a) of this section, "civil division of the District of Columbia Court of General Sessions" is substituted for the reference in section 15-101 of D.C. Code, 1961 ed., to the "municipal court".

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Action of account, see § 16-101.

Adoption proceedings, final or interlocutory decree, see § 16-218.

Foreign judgments, see § 12-307.

Interest on judgments, see §§ 28-2707 to 28-2709.

Partnerships, judgment against partners, see §§ 41-118, 41-127.

##### § 15-102. Lien of judgment, decree, or forfeited recognition.

(a) Every:

(1) final judgment or unconditional final decree for the payment of money, from the date when it is rendered;

(1) judgment or decree rendered in the civil division of the District of Columbia Court of General Sessions, when docketed in the clerk's office of the United States District Court for the District of Columbia; and



(3) recognizance taken by the United States District Court for the District of Columbia, or judge thereof, from the time when it is declared forfeited—

is a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by the judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent.

(b) A recognizance taken in the criminal division of the Court of General Sessions, after being forfeited, may be transmitted to the clerk's office of the District Court and docketed therein in the same manner as judgments rendered in the civil division of that court, with the same effect as if taken in the District Court.

(c) Liens created as provided by this section continue as long as the judgment, decree, or recognizance is in force or until it is satisfied or discharged. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 15-103 (Mar. 3, 1901, ch. 854, § 1214, 31 Stat. 1381; June 30, 1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from section 15-103 of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (a), the reference "civil division of the District of Columbia Court of General Sessions" is substituted for "municipal court", and, in subsec. (b), the reference "criminal division of the Court of General Sessions" is substituted for "municipal court". See revision note under section 15-101 herein.

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Docketing judgments rendered in municipal court, see § 15-132.

Execution on forfeited recognizance, see § 16-709.

Issuance of execution, see § 15-302.

Purchase money lien, see § 15-104.

#### § 15-103. Effect of revival.

An order of revival issued upon a judgment or decree during the period of twelve years from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-107 (Mar. 3, 1901, ch. 854, § 1215, 31 Stat. 1381).

The provisions are reworded not only to make phraseological changes, but also to refer to "order of revival" and "order", rather than "scire facias" and "fiat". See revision note under section 15-101 herein.

#### CROSS REFERENCE

Execution against specific property, see § 16-555.

#### § 15-104. Priority of liens.

The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-108 (Mar. 3, 1901, ch. 854, § 1216, 31 Stat. 1381).

Changes are made in phraseology.

#### § 15-105. Decree confirming sale of property—Effect—Ordering conveyance.

A decree confirming the sale of real or personal property sold pursuant to a decree, divests the right, title, or interest sold out of the former owner, party to the action, and vests it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. The decree constitutes notice to all persons of the transfer of title when a copy thereof is registered among the land-records of the District. In particular cases, the court may order its officer or agent to make a conveyance, if that mode is deemed preferable. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-341, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-109 (R.S.D.C., § 793; Comp. Stat. D.C., p. 75, § 6).

The second reference to "decree" is substituted for "decree in equity", as, under the Federal Rules of Civil Procedure, there is only one form of action in district courts, which is designated as a "civil action". See Rule 2.

Changes are made in phraseology.

#### CROSS REFERENCE

Judgment in mortgage foreclosure, see § 45-616.

#### § 15-106. Judgment and damages assessed in actions on bonds or penal sums.

(a) In a civil action on a bond or on a penal sum for the nonperformance of covenants or agreements contained in an indenture, deed, or writing, the plaintiff may assign as many breaches as he chooses. Damages shall be assessed for such breaches as he proves and judgment rendered for the whole penalty, but execution shall issue for as much only as is found in damages, with costs.

(b) In an action brought under subsection (a) of this section, upon judgment for the plaintiff on motion, default, or confession, the plaintiff may assign as many breaches as he chooses, the truth of which shall be determined. The damages shall be assessed and execution shall issue for such damages only, with costs.

(c) Payment into court, after entry of judgment and prior to the issuance of execution, of the amount of the damages and costs assessed, for the use of the plaintiff or his representatives, stays execution, and the stay shall be entered on the record. Payment to the plaintiff or his representatives, after execution, of the amount of the damages and costs assessed, together with all fees and other reasonable costs of execution, forthwith discharges the defendant's real and personal property from execution, and the discharge shall be entered on the record. However, the judgment shall remain as a security to the plaintiff or his representatives for any other breaches which he or they afterwards prove. From



time to time, the plaintiff may, by motion and hearing, with reasonable notice to the defendant, assign other breaches, and damages shall be assessed for such breaches as he proves, with costs. Payment into court, before execution, or to the plaintiff or his representative, after execution, as herein described, has the same effect as hereinbefore directed.

(d) In proceedings under this section, the right of trial by jury, as to issues of fact and the amount of damages to be assessed, is preserved.

(e) This section is subject to section 28-2405 of this Code and to section 1874 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 13-205, 15-111 (8 and 9 Wm. 3, ch. 11, § 8, 1697; Kilty Rep., p. 244; Alex Br. Stat., p. 604; Comp Stat. D.C., p. 69, § 14).

Section consolidates sections 13-205 and 15-111 of D.C. Code, 1961 ed., which respectively were derived from different parts of section 8 of the statute of 8 and 9 William III, chapter 11.

The statute of 8 and 9 William III was made applicable in the District of Columbia by section 1 of the Code of 1901 (act. Mar. 3, 1901, ch. 854, § 1, 31 Stat. 1189; D.C. Code, 1961 ed., § 49-301; see also, act Feb. 27, 1801, ch. 15, § 1, 2 Stat. 103). Prior to its enactment in 1697, in the common-law courts the plaintiff, if entitled to a recovery, was entitled to the penal sum, unless the amount was subsequently reduced in equity. The object of the statute was to empower, or perhaps require, common-law courts to limit recovery to the actual damages sustained, with costs, and thus obviate the necessity for the judgment debtor to go into equity for relief. In most jurisdictions, its principles have been generally adopted, either by statute or as a part of the common law; and, in some jurisdictions, as apparently in the District of Columbia, the provision of the British statute permitting judgment for the full amount of the penal sum (to remain as security to the plaintiff for further breaches) but limiting each execution to the amount of damages actually sustained, with costs, is retained. See (in addition to sections 13-205 and 15-111 of D.C. Code, 1961 ed.) Illinois Revised Statutes 1955, ch. 110, § 53, as amended by L. 1955 (approved July 19, 1955), p. 2238 (2261), H.B. No. 439; Vermont Statutes Annotated, Title 12, § 5242 et seq.

Section 13-205 of D.C. Code, 1961 ed., provided as follows:

"In all actions which shall be commenced or prosecuted in any courts of record, upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or nihil dicit, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which a jury shall inquire of the truth of every one of those breaches, and assess the damages that the plaintiff shall have sustained thereby."

Section 15-111 of the Code provided, as follows:

"In any action upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed or writing contained in case the defendant or defendants, after judgment entered, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages, so to be assessed, by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said

judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expences for executing the said execution, the lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing, contained, upon which the plaintiff or plaintiffs may have a scire facias upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators suggesting other breaches of the said covenants, or agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof, upon a writ to be awarded in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed, and so toties quoties, and the defendant's lands or goods shall be discharged out of execution, as aforesaid."

There may be a question as to how much of these old sections is still in force, considering later enactments. For example, section 28-2405 of D.C. Code, 1961 ed., provides, as follows: "A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond." Section 1874 of Title 28, United States Code, provides, as follows: "In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury." It will be noted that in those provisions the judgment, if it is by default or confession of the defendant, is for the amount found to be due, rather than for the entire penal sum. But it does not seem that those two sections, even when taken together, supersede or cover all the provisions of sections 13-205 and 15-111 of D.C. Code, 1961 ed., and accordingly they are consolidated and brought into this revised section.

In the consolidation, the language is modernized, all surplusage omitted, and some of the provisions are changed to conform, as nearly as can be determined, with modern practice and procedure as established by court rules. To this end, "civil action" is substituted for "action", to conform with Rule 2 of the Federal Rules of Civil Procedure, which provides that in district courts there shall be one form of action, to be known as a "civil action". See, also, Rule 2 of the civil rules of the District of Columbia Court of General Sessions, which contains a similar provision.

In subsec. (b), "motion" is substituted for "demurrer", as demurrers were abolished by Rule 7(c) of the Federal Rules of Civil Procedure and Rule 7(c) of the civil rules of the Court of General Sessions. Under other provisions of those rules, the procedure under demurrer was superseded by procedure by motion. See, for example, Rules 7 and 12.

In subsec. (c) of this section, words "motion and hearing, with reasonable notice to defendant," are substituted for the reference in section 15-111 of the D.C. Code, 1961 ed., to scire facias. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and



provides that the remedies theretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in those rules. See, also, Rule 30 of the local rules of the United States District Court for the District of Columbia, providing that a judgment may be revived against a judgment debtor on motion, with service of notice.

Subsec. (d) of this section preserves the right of jury trial as to issues of fact and the amount of damages to be assessed, in cases where such right exists. Section 13-205 provides for jury trial in the original action, even if the judgment was rendered by demurrer, confession, or "nihil dicit"; and a jury trial to assess further damages, under scire facias, in case of additional breaches, was implied in section 15-111 of the Code ("upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof"). However, it appears that in cases under the above-quoted section 1874 of Title 28, United States Code, where the judgment is by default or confession, the damages are assessed by a jury only if the sum is uncertain and either party requests that procedure. This right to demand a jury assessment is preserved in Rule 55 of the Federal Rules of Civil Procedure, relating to default judgments. Rule 55 of the civil rules of the Court of General Sessions is similar to Rule 55 of the Federal Rules of Civil Procedure, except that it contains no reference to according a right of trial by jury (to assess damages) if required by statute.

Subsec. (e), while new, makes no change in substance. It is inserted to make it clear that this section does not affect section 28-2405 of D.C. Code, 1961 ed., and section 1874 of Title 28, United States Code (both quoted above), and that it is subject to the provisions of those sections.

#### § 15-107. Setting off judgments.

Where reciprocal claims between different parties have passed into judgments the court, on motion, may order that the judgments be set off against each other and satisfaction of both be entered to the amount of the smaller claim. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1909 (Mar. 3, 1901, ch. 854, § 1571, 31 Stat. 1424).

Words "in its discretion," are omitted as surplusage. A minor change is made in phraseology.

### SUBCHAPTER II.—COURT OF GENERAL SESSIONS

#### § 15-131. Judgments and executions generally—Interest

In civil cases within its jurisdiction, the District of Columbia Court of General Sessions may try, hear, and determine the matter in controversy between the parties upon their allegations and proofs, and give judgment according to law; and judgments for money rendered by it bear interest from their date until paid or satisfied, unless by the terms of the judgment interest runs from an earlier date. The court may issue writs of execution in cases in which it may render judgment. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-724, 11-751a (Mar. 3, 1901, ch. 854, § 12, 31 Stat. 1191; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a, enacted by the act of Oct. 23, 1962, changed the name of

the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

#### § 15-132. Enforceable period of judgments—Effect of docketing in District Court—Domestic Relations Branch.

(a) A judgment entered by the District of Columbia Court of General Sessions shall remain in force for only six years, unless it is docketed in the office of the clerk of the United States District Court for the District of Columbia. Upon being so docketed, the judgment has the same force and effect for all purposes as if it were a judgment of the District Court, and, until it is so docketed, it does not become a lien upon any real property in the District. The clerk of the District Court shall charge a fee of 50 cents for docketing the judgment.

(b) A judgment of the Domestic Relations Branch of the Court of General Sessions has the same legal status as a lien upon real property as a judgment of the District Court.

(c) Upon the payment of a fee of 50 cents, the clerk of the Court of General Sessions shall prepare a copy of any judgment of the civil division of the Court, that is in force. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-755 note, 11-763 (Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171).

Section consolidates section 6 (41 Stat. 1311) of the act of Mar. 3, 1921, ch. 125, which was set out as a note under section 11-755 of D.C. Code, 1961 ed., and which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court, with subsec. (c) of section 11-755 of D.C. Code, 1961 ed., which related to the second Municipal Court (formed from the 1942 merger), and with the second sentence of subsec. (b) of section 11-763 of the Code, which related to the Domestic Relations Branch of the second Municipal Court.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Section 6 of the act of Mar. 3, 1921, referred to above, provided, as follows:

"All judgments hereafter entered by said Municipal Court shall remain in force for six years and no longer, unless the same shall have been docketed in the office of the clerk of the Supreme Court of the District of Columbia as provided by law, in which event they shall be liens as is provided by Chapter XXXVIII of the Code of Law for the District of Columbia [sections 15-101 to 15-111, 15-201 to 15-218, 15-301 to 15-313, and 15-401 to 15-403 of D.C. Code, 1961 ed.] for judgments of justices of the peace. No judgment shall become a lien upon any lands, tenements, or hereditaments until so docketed."

Subsec. (c) of section 11-755 of the D.C. Code, 1961 ed., referred to above, provided, as follows:

"(c) All judgments entered by the Municipal Court for the District of Columbia [now, the District of Columbia Court of General Sessions] on or after the effective date of this Act [Act of Apr. 1, 1942] shall remain in force for six years and no longer unless the same be docketed in the office of the clerk of the United States District Court for the District of Columbia. Upon payment of a fee of 50 cents the clerk of the Municipal Court for the District of Columbia shall prepare a copy of any judgment



of the said court whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered, and the same upon being docketed with the clerk of said District Court shall have the same force and effect for all purposes as if it had been a judgment of said District Court. For the docketing of the same the clerk of said District Court shall charge a fee of 50 cents."

It would seem that, actually, the above-quoted subsec. (c) of section 11-755 of D.C. Code, 1961 ed., which was enacted in 1942, superseded the above-quoted section 6 of the act of Mar. 3, 1921, but, for the purpose of clarity, the provision of the latter that no judgment of the Municipal Court (now, Court of General Sessions), becomes a lien upon any real property in the District until docketed in the clerk's office of the District Court is carried forward into this revised section.

Words "on or after the effective date of this Act", which followed "All judgments entered by the Municipal Court for the District of Columbia" at the beginning of section 11-755(c) of D.C. Code, 1961 ed.; and words "whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered" which in section 11-755(c) followed "shall prepare a copy of any judgment of the said court", are omitted as obsolete and unnecessary, in view of the period of time that has elapsed since section 11-755 was enacted (in 1942).

Changes are made in phraseology.

For remainder of section 11-755, see tables.

### § 15-133. Satisfaction of judgment—Recordation.

A judgment of the civil division of the District of Columbia Court of General Sessions, or execution thereon, may not be recorded as satisfied without the receipt of the plaintiff or his attorney annexed thereto. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-742, 11-751a (Mar. 3, 1901, ch. 854, § 28, 31 Stat. 1194; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "of the civil division of the Municipal Court" are inserted for the purpose of clarity. When enacted in 1901, section 28 of the act of Mar. 3, 1901, cited above, from which the above-cited section 11-742 of D.C. Code, 1961 ed., was derived, while it made no reference to any court, was in a group of sections relating to justices of the peace, who had civil jurisdiction only. In 1909, the justice of the peace courts became the Municipal Court. Since the merger of the Municipal Court with the Police Court in 1942, when the second Municipal Court was established, the court (now, Court of General Sessions) has had a civil division and a criminal division, and it also has several special branches.

Changes are made in phraseology.

### Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

Sec.

- 15-301. Definition and applicability.
- 15-302. Period during which writ of execution may issue—Returnable period.
- 15-303. Alias writs.
- 15-304. Return of writ.
- 15-305. Issuance of writ after expiration of period.
- 15-306. Election to move for new judgment in lieu of execution.
- 15-307. Lien of execution.
- 15-308. Endorsement, by marshal, of date of receipt of writ.
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Sec.

- 15-311. Property subject to levy.
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- 15-317. Remedy of marshal for erroneous sale made in good faith.
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- 15-319. Execution of final decree after death—Other appropriate proceedings.
- 15-320. Enforcement of decrees.
- 15-321. Enforcement of interlocutory decrees.
- 15-322. Enforcement of decrees for delivery of chattels.
- 15-323. Limitation on seizure of real property.

### § 15-301. Definition and applicability.

As used in sections 15-302, 15-303, 15-305 to 15-307, 15-309, 15-310, 15-317, and 15-318, "judgment" includes an unconditional decree for the payment of money, and sections 15-302 to 15-318 are applicable to such a decree. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15-218 of D.C. Code, 1961 ed., provided as follows:

"The foregoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment."

In the above-quoted provisions, the parenthetical reference, "(this chapter)", refers to chapter 2 of Title 15 of D.C. Code, 1961 ed., which contained the provisions carried into this revised section and sections 15-302 to 15-317 herein. As other provisions are also carried into this revised chapter, the provisions of section 15-218 of D.C. Code, 1961 ed., as herein set out, are reworded to refer to the sections containing the provisions to which section 15-218 related in D.C. Code, 1961 ed.

The provision that the decree may be revived by scire facias is omitted as obsolete. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by that writ may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules. See, also, rule 54(a) of those rules providing that, as used in the rules, "judgment" includes a decree and any order from which an appeals lies, and rule 30 of the local rules of the United States District Court for the District of Columbia, which provides for revival of a judgment by motion and hearing. See, also, section 15-101 of this revised Part relating to the enforceable period of judgments and final decrees for the payment of money, and rule 54(a) of the civil rules of the Court of General Sessions, which, like Rule 54(a) of the Federal Rules of Civil Procedure, provides that, as used in those rules, "judgment" includes a decree and any order from which an appeal lies.

The remaining provisions are rewritten, but without change of substance. By providing that, as used in the sections cited, "judgment" includes an unconditional decree for the payment of money, and by making sections 15-302 to 15-318 herein applicable to any such decree, it is not necessary to retain the provision "and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment".

In the 1901 Code, section 1104 thereof, from which section 15-218 of D.C. Code, 1961 ed., was derived, also related to attachments after judgment and after the type



of decree referred to in the section. Therefore, it is also carried into subchapter II of chapter 5 of Title 16 of this revised Part.

#### CROSS REFERENCE

Other provisions regarding decrees, see § 15-101 et seq.

#### § 15-302. Period during which writ of execution may issue—Returnable period.

(a) A writ of execution on a judgment in a civil action may be issued within three years after:

- (1) the expiration of any stay of execution agreed to by the parties; or
- (2) it first might have been issued under applicable provisions of law or rules of court.

(b) A writ of execution shall be returnable on or before the sixtieth day after its date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-201 (Mar. 3, 1901, ch. 854, § 1074, 31 Stat. 1358).

Section 15-201 of D.C. Code, 1961 ed., cited above, provided as follows:

"Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date."

In this revised section, the provisions are, for the most part, rewritten to omit obsolete or superseded matter, and to have them conform with rules of court adopted since section 15-201 was enacted in 1901.

Rule 58 of the Federal Rules of Civil Procedure (which rules apply in the District Court), and rule 58 of the civil rules of the District of Columbia Court of General Sessions, both of which relate to entry of judgment, both provide that the judgment is not effective before entry. Rule 62 of the Federal Rules of Civil Procedure, and the civil rules of the District of Columbia Court of General Sessions, respectively, provide for stay of proceedings to enforce a judgment; and Rule 73 of the rules, respectively, relate to supersedeas bond to stay proceedings on appeal. Under Rule 62 of the Federal rules, there is an automatic stay of 10 days after entry of judgment, and under Rule 62 of the Court of General Sessions rules, there is an automatic stay of 5 days after the entry. Those rules also cover such matters as stay on motion for new trial or for judgment, injunction pending appeal, stay upon appeal, stay in favor of the United States or an agency thereof, power of appellate court to stay proceedings during pendency of an appeal, or to suspend, modify, restore or grant an injunction during the pendency, and stay of judgment upon multiple claims.

In view of these rules, it is only necessary to retain in subsec. (a) of this revised section the provision that a writ of execution on a judgment may be issued within 3 years after (1) the expiration of any stay of execution agreed to by the parties (which is not covered by said rules), and (2) the date on which it first might have been issued under applicable provisions of law or rules of court. Subsec. (a) is so reworded, accordingly. In clause (2), the reference to "law" is inserted for the purpose of covering cases of stay, if any, not covered by the rules referred to above.

#### CROSS REFERENCES

Disability insurance benefits, exemption from execution, see § 35-717.

Exemptions, see § 15-501 et seq.

Forfeited recognizance, execution on, see § 16-709.

Fraternal benefit association benefits not subject to execution, see § 35-911.

Group life insurance benefits, exemption from execution, see § 35-718.

Landlord's lien, execution to enforce, see §§ 45-916, 45-917.

Life insurance proceeds, exemption, see § 30-213.

Motor Vehicle Safety Responsibility Act, execution against money deposits in court, see § 40-480.

Rent, payment of before goods may be seized by execution, see § 45-918.

Social Security Act old-age assistance not subject to execution, see § 46-204.

Teacher's retirement annuity not subject to execution, see § 31-718.

Unemployment Compensation Act benefits not subject to execution except for necessities, see § 46-318.

Wrongful death recovery, exemption of, see § 16-2703.

#### § 15-303. Alias writs.

If a writ of execution is issued and returned unsatisfied, in whole or in part, within the period of three years provided by section 15-302, an alias writ may be issued during the life of the judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-202 (Mar. 3, 1901, ch. 854, § 1075, 31 Stat. 1358).

Changes are made in phraseology.

#### § 15-304. Return of writ.

If the return of a writ of execution is not made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-203 (Mar. 3, 1901, ch. 854, § 1076, 31 Stat. 1358).

Changes are made in phraseology.

#### § 15-305. Issuance of writ after expiration of period.

A writ of execution not issued within the time allowed therefor, may not be issued until the judgment has been revived. The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-204 (Mar. 3, 1901, ch. 854, § 1077, 31 Stat. 1359).

Section 15-204 of the D.C. Code, 1961 ed., cited above, provided, as follows:

"If said writ shall not be issued within the time allowed therefor, as aforesaid, it shall not be issued until a scire facias has been issued upon said judgment and a fiat shall be deemed a renewal of the judgment, and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment."

Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that relief therefore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules; and Rule 30 of the local rules of the United States District Court provides for revival of a judgment by motion and hearing. Therefore in this revised section the words "may not be issued until the judgment has been revived" are substituted for "it shall not be issued until a scire facias has been issued upon said judgment and a fiat has been rendered thereupon", and the words "The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment" are substituted for "Said fiat shall be deemed a renewal of the judgment and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment".

Other changes are made in phraseology.

#### CROSS REFERENCES

Decrees in equity, see § 15-309.

Extension of time of lien, § 15-103.



### § 15-306. Election to move for new judgment in lieu of execution.

During the life of the original judgment the plaintiff, instead of issuing execution thereon within the time allowed therefor, may elect to obtain a new judgment by motion and hearing as provided by rules of court. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-205 (Mar. 3, 1901, ch. 854, § 1078, 31 Stat. 1359).

Words "to obtain a new judgment by motion and hearing as provided by rules of court" are substituted for "to issue a scire facias on the same and obtain a new judgment as aforesaid". See revision note under section 15-305 herein.

### § 15-307. Lien of execution.

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-206 (Mar. 3, 1901, ch. 854, § 1079, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

### § 15-308. Endorsement, by marshal, of date of receipt of writ.

Upon the receipt of any writ of fieri facias or other writ of execution, the marshal or his deputy shall, without fee, endorse upon the back of the writ the day of the month and year when he received it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-207 (29 Car. II, 1676, ch. 3, § 16; Alex. Br. Stat., p. 511; Comp. Stat., D.C., p. 222, § 1).

The substance of this British statute is still preserved in a number of American States. See, for example, Code of Ala. 1940, Title 7, § 525; Vermont Statutes Annotated, Title 12, § 2688; Ill. Rev. Stat. 1955, ch. 77, § 9; ch. 79, § 126; Del. Code 1953, Title 10, § 5084.

Reference to the coroner and to agents are omitted as obsolete.

Changes are made in phraseology.

### § 15-309. Death of judgment debtor after delivery of execution.

The death of the judgment debtor after the execution issued on the judgment has been delivered to the marshal does not affect his authority to proceed against the property bound by it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-208 (Mar. 3, 1901, ch. 854, § 1080, 31 Stat. 1359).

A minor change was made in phraseology.

### § 15-310. Lien of execution on Court of General Sessions judgment—Levy.

An execution issued on a judgment of the District of Columbia Court of General Sessions is not a lien

on the personal property of the judgment debtor except from the time when it is actually levied, and then it has priority over any execution issued out of the United States District Court for the District of Columbia after the levy. It may not be levied on real estate. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 15-209 (Mar. 3, 1901, ch. 854, § 1081, 31 Stat. 1359; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873; § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

### § 15-311. Property subject to levy.

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia may be levied on all legal leasehold and freehold estates of the debtor in land. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-210 (Mar. 3, 1901, ch. 854, § 1082, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to the "constable (coroner)" is omitted as obsolete, and in lieu thereof words "his deputy [deputy of the marshal] or other officer or person" are inserted.

Reference to "gold and silver coin" is omitted as covered by "money".

Changes are made in phraseology.

#### CROSS REFERENCE

Certain income and benefits not subject to execution, see note to § 15-302.

### § 15-312. Levy on money and evidences of debt.

When the fieri facias is levied on money belonging to the judgment debtor the marshal may not expose the money to sale, but shall account for it as money collected. Bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal may indorse them to pass title to the purchaser. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-211 (Mar. 3, 1901, ch. 854, § 1083, 31 Stat. 1359).

Changes are made in phraseology.

### § 15-313. Levy on equitable interest in chattels pledged.

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee, and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and



the lien thus obtained may be enforced by civil action. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by civil action. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-212 (Mar. 3, 1901, ch. 854, § 1084, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541.)

Words "civil action" are substituted for "proceedings in equity" in two places, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. Rule 2 thereof (as well as Rule 2 of the civil rules of the Court of General Sessions) provides that in civil cases there shall be only one form of action, to be known as a "civil action".

#### § 15-314. Appraisement—Notice of sale.

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-214 (Mar. 3, 1901, ch. 854, § 1085, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541.)

The provision that estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code, is substituted for the provision that such estates may be sold after 20 days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title. Section 2002 of Title 28, United States Code, which applies to all district courts, including the United States District Court for the District of Columbia, prescribes the manner of notice of the sale of realty under order, judgment, or decree of court. Sections 2001 and 2004 of that title (and Rule 31 of the local rules of the U.S. District Court for the District of Columbia) relate, respectively, to the sale of realty, and the sale of personalty, but only to sales under order or decree of court (judicial sales). They do not relate to sales under execution. Section 2005 thereof provides in part that whenever State law (which, as used therein, includes law of the District of Columbia) requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States (which term, under sections 88, 132, and 451 thereof, includes the U.S. District Court, for the District of Columbia) shall be appraised in like manner. It also provides for the summoning of appraisers by the marshal, for sale of the goods by the marshal without an appraisal, if the appraisers fail to attend and perform their required duties, and for the payment of appraisers' fees according to "State" law.

For additional provisions relating to executions on judgments, see Rules 69, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology.

#### § 15-315. Death, removal, or disqualification of marshal.

When the marshal dies, or is removed from office, or becomes otherwise disqualified from executing a writ of execution received by him, the writ may be executed and returned by his deputy or successor in

office. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-215 (Mar. 3, 1901, ch. 854, § 1101, 31 Stat. 1361; June 30, 1902, ch. 1329, 32 Stat. 541.)

Reference to the coroner is omitted as obsolete.

For provisions relating to death, removal, or incapacity of marshal after levy on real property but before sale, or after levy thereon and sale thereof, but before execution of a deed, see section 2003 of Title 28, United States Code.

Changes are made in phraseology.

#### § 15-316. Subrogation of purchaser after defective sale—No refund.

When, upon the sale of property under execution, the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent has a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor may not be required to refund the purchase money on account of the invalidity of the sale. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-216 (Mar. 3, 1901, ch. 854, § 1102, 31 Stat. 1361).

Minor changes are made in phraseology.

#### § 15-317. Remedy of marshal for erroneous sale made in good faith.

When the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of the value, may, on motion and due notice thereof to the defendant, have the satisfaction of the judgment vacated, and execution shall issue thereon for his use as if the levy and sale had not been made. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-217 (Mar. 3, 1901, ch. 854, § 1103, 31 Stat. 1362).

Minor changes are made in phraseology.

#### § 15-318. Remedies of purchaser upon refusal to deliver possession.

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the



summary remedy in the District of Columbia Court of General Sessions provided for in sections 16-1501 to 16-1505. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 15-313 (Mar. 3, 1901, ch. 854, § 1100, 31 Stat. 1361; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1962, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

#### § 15-319. Execution of final decree after death—Other appropriate proceedings.

When a party to an action dies after final decree, the court may order execution of the decree as if death had not occurred, or the court, after motion and hearing, may order the decree revived against the proper representatives of the deceased party, or make such other order or direct such other proceedings as seems best calculated to advance the purposes of justice. The heir or other proper representative may appear at any time before execution of the decree and be admitted as a party to the action, on such terms as the court prescribes, and such further proceeding may be had as may be appropriate to the merits of the cause. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 12-113 (Mar. 3, 1901, ch. 854, § 248, 31 Stat. 1229).

Words "the court, after motion and hearing, may order the decree revived against the proper representatives" are substituted for "the court may order a subpoena scire facias to be issued, or a bill of revivor to be filed against the proper representatives". Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules. See, also Rule 30 of the local rules of the United States District Court for the District of Columbia relating to revival of judgment against a judgment debtor (by motion and hearing), and Moore's Federal Practice, 2d ed., vol. 4, § 25.03. The reference to "bill of revivor" in the words quoted above from section 12-113 of the D.C. Code, 1961 ed., is omitted. This term was used in equity practice and has been obsolete since the merger of law and equity practice by the Federal Rules of Civil Procedure.

Changes are made in phraseology.

#### § 15-320. Enforcement of decrees.

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the District of Columbia Court of General Sessions, in addition to the other procedures provided for by this chapter and chapter 5 of Title 16, may:

(1) issue an attachment against the person of the defendant;

(2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or

(3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be made out of the estate and effects so sequestered, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

(1) the defendant to stand committed; or

(2) his estates and effects to be sequestered and payment made, as directed by subsection (a) of this section; or

(3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section—

until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-326 (Mar. 3, 1901, ch. 854, § 113, 31 Stat. 1208).

"United States District Court for the District of Columbia" is substituted for "said court". The latter referred, in the original (Code of 1901), to the "equity court", which, under the provisions of that Code, was the Supreme Court of the District of Columbia (now the District Court) when exercising its equity jurisdiction at the special term provided therein for such purpose. The term "equity court" has been obsolete since the enactment, in 1948, of Title 28, United States Code. See revision note under section 11-502 herein.

The reference, in subsec. (a), to the District of Columbia Court of General Sessions, is new, and merely conforms the section with the present jurisdiction and powers of that court, and does not effect a change in substance. After the merger, in 1942, of the Municipal Court of the District of Columbia, and the Police Court, to form the Municipal Court for the District of Columbia, at which time the civil jurisdiction of the Municipal Court was enlarged, the Municipal Court had equitable jurisdiction. See the cases of *Klepinger v. Rhodes*, C.A. Dist. Col. 1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, cert. denied 64 S. Ct. 1047, 322, U.S. 734, 88 L. Ed. 1568; *Ridgley v. U.S.*, D.C. Mun. App. 1945, 45 A. 2d 475. In 1962, the name of the court was changed to District of Columbia Court of General Sessions. See section 11-901 herein.

The phrase "or may issue a fieri facias and attachment by way of execution against lands tenements, chattels, and credits, or other incorporeal property, to satisfy the decree" is omitted as covered by other provisions of this chapter and chapter 5 of Title 16 herein, which relate to "decrees" as well as judgments. However, for the purpose of completeness, the phrase "in addition to the other procedures provided for by this chapter and chapter 5 of Title 16" is inserted near the beginning of subsec. (a).

For additional provisions relating to the enforcement of judgments and decrees for the performance of specific acts, see Rules 54(a) and 70, respectively, of the Federal Rules of Civil Procedure and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

#### § 15-321. Enforcement of interlocutory decrees.

An interlocutory order may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to a party may be enforced in like manner. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-327 (Mar. 3, 1901, ch. 854, § 114, 31 Stat. 1208).

Minor changes are made in phraseology.

### § 15-322. Enforcement of decrees for delivery of chattels.

In addition to the procedures for enforcement of judgments or decrees otherwise provided for, an order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-328 (Mar. 3, 1901, ch. 854, § 115, 31 Stat. 1208).

Words “, as well as those heretofore used for its enforcement in equity practice”, which followed “common law”, are omitted as obsolete, or in any event unnecessary, in view of the other provisions of this chapter, the Federal Rules of Civil Procedure, adopted in 1938, which merged law and equity practice, and the civil rules of the District of Columbia Court of General Sessions, which are patterned to some extent upon the Federal Rules of Civil Procedure. See particularly, rules 54(a), 64, and 70 of the Federal Rules of Civil Procedure, and rules 54(a) and 70(b) of the civil rules of the Court of General Sessions. However, to make it clear that the type of decree referred to is enforceable in other ways, words “In addition to the procedures for enforcement of judgments or decrees otherwise provided for,” are inserted at the beginning.

### § 15-323. Limitation on seizure of real property.

Real property or rent shall not be seized for a debt, as long as the present goods and chattels of the debtor are sufficient to pay it, and the debtor himself is ready to satisfy the debt. (Dec. 21, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-213 (9 Hen. 3, ch. 8, § 1, 1225; Kilty's Rep., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D.C., p. 223, § 4).

This British statute is still being applied in the District of Columbia. See *Encyclopaedia v. Jones*, D.C.D.C. 1951, 101 F. Supp. 521.

Changes are made in phraseology.

## Chapter 5.—EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY

### SUBCHAPTER I.—EXEMPTIONS

Sec.

- 15-501. Exempt property of householder—Property in transitu—Debt for wages.
- 15-502. Mortgage or other instrument affecting exempt property.
- 15-503. Earnings and other income.—Wearing apparel and tools of certain persons.

### SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

- 15-521. Notice of claim or exemption—Trial.
- 15-522. Docketing of claim—Manner of trial.
- 15-523. Judgment.
- 15-524. Replevin against officer.

### SUBCHAPTER I.—EXEMPTIONS

### § 15-501. Exempt property of householder, property in transitu—Debt for wages.

(a) The following property of the head of a family or householder residing in the District of

Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding \$300 per person in value;

(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding \$300 in value;

(3) provisions for three months' support, whether provided or growing;

(4) fuel for three months;

(5) mechanics' tools and implements of the debtor's trade or business amounting to \$200 in value, with \$200 worth of stock or materials for carrying on the business or trade of the debtor;

(6) the library, office furniture, and implements of a professional man or artist, not exceeding \$300 in value;

(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding \$500 in value if used principally by the debtor in his trade or business; and

(8) all family pictures; and all the family library, not exceeding \$400 in value.

The exemption provided for by clause (5) of this subsection also applies to merchants.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transitu the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof. (Dec. 23, 1963, 77 Stat. 529, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-401 (Mar. 3, 1901, ch. 854, § 1105, 31 Stat. 1362; Dec. 20, 1944, ch. 610, § 1, 58 Stat. 817).

Minor changes are made in phraseology and arrangement.

## CROSS REFERENCES

Certain income and benefits not subject to execution, see § 15-302.

Exemption after death, see § 18-406.

Notary's seal and official documents exempt from execution, see § 1-507.

### § 15-502. Mortgage or other instrument affecting exempt property.

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the wife of a debtor who is married and living with his wife. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-402 (Mar. 3, 1901, ch. 854, § 1106, 31 Stat. 1362).

Minor changes are made in phraseology.

### § 15-503. Earnings and other income—Wearing apparel and tools of certain persons.

(a) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife is the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed \$60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding \$300 in value, and mechanic's tools not exceeding \$200 in value, are also exempt.

(c) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-403 (Mar. 3, 1901, ch. 854, § 1107, 31 Stat. 1363; Dec. 20, 1944, ch. 610, § 2, 58 Stat. 818; Apr. 15, 1952, ch. 206, § 1, 66 Stat. 59; Aug. 4, 1959, Pub. L. 86-130, § 4, 73 Stat. 277).

Minor changes are made in phraseology.

## SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

### § 15-521. Notice of claim or exemption—Trial.

When personal property taken on execution or other process issued by the District of Columbia Court of General Sessions is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal

of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-744, 11-751a (Mar. 3, 1901, ch. 854, § 33, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

### § 15-522. Docketing of claim—Manner of trial.

The case made by the claim referred to in section 15-521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-745 (Mar. 3, 1901, ch. 854, § 34, 31 Stat. 1194; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

### § 15-523. Judgment.

If the property referred to in section 15-521 appears to belong to the claimant or to be exempt from the process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be released. If the property does not appear to belong to the claimant or to be exempt, judgment shall be entered against the claimant or the defendant as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-746 (Mar. 3, 1901, ch. 854, § 35, 31 Stat. 1195; June 30, 1902, ch. 1329, 32 Stat. 521; Apr. 19, 1920, ch. 153, 41 Stat. 555).

Minor changes are made in phraseology.

### § 15-524. Replevin against officer.

This subchapter does not prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as described in this subchapter. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-747 (Mar. 3, 1901, ch. 854, § 37, 31 Stat. 1195).

Minor changes are made in phraseology.

## CROSS REFERENCES

Certain income and benefits not subject to execution, see notes to § 15-302.



## Chapter 7.—FEES AND COSTS

Sec.

- 15-701. Compensation taxed as costs—Attorneys' compensation from clients.
- 15-702. Docket fees of attorneys and proctors.
- 15-703. Deposit for costs—Security for costs by non-residents.
- 15-704. Advance payment of costs and fees.
- 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.
- 15-706. Clerk's fees in United States District Court for the District of Columbia.
- 15-707. Probate Court fees.
- 15-708. Deposit for probate court fees.
- 15-709. Fees and costs in Court of General Sessions in civil and criminal cases.
- 15-710. Fees and costs in Domestic Relations Branch of Court of General Sessions.
- 15-711. Deposit or security for costs in Court of General Sessions.
- 15-712. Waiver of prepayment of costs in Court of General Sessions.
- 15-713. Deposits for jury trials in Court of General Sessions.
- 15-714. Witness fees for attendance in Court of General Sessions.
- 15-715. Witness fees in prosecutions for cruelty to children or animals.
- 15-716. Advances to Court of General Sessions clerk for witness fees.

## § 15-701. Compensation taxed as costs—Attorneys' compensation from clients.

(a) Except as otherwise provided by law, only the compensation specified in this chapter may be taxed and allowed to attorneys, proctors, United States attorney, clerk of the United States District Court for the District of Columbia, marshal, witnesses, and jurors.

(b) This chapter does not prohibit attorneys and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1501 (Mar. 3, 1901, ch. 854, § 1108, 31 Stat. 1363; June 25, 1948, ch. 646, §§ 16, 32(b), 62 Stat. 989, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to "solicitors" is omitted as covered by "attorneys", and "district attorney" is changed to "United States attorney" pursuant to Title 28 U.S.C.

The taxation of costs in the United States District Court is also governed by 28 U.S.C. § 1920.

Changes are made in phraseology.

## CROSS REFERENCES

Notary fee, see §§ 1-514, 1-515.

Recorders fees, see § 28-708.

## § 15-702. Docket fees of attorneys and proctors.

(a) Attorney's and proctor's docket fees may be taxed in the amounts fixed by section 1923 of Title 28, United States Code.

(b) An attorney for the District of Columbia may not retain attorney fees taxed as costs in litigation in which the District of Columbia is a party. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1502, 11-1516 (Mar. 3, 1901, ch. 854, § 1109, 31 Stat. 1363; Sept. 1, 1916, ch. 433, 39 Stat. 678; May 24, 1949, ch. 139, § 140, '63 Stat. 109). Word "solicitor's" is omitted as covered by "attorneys".

Docket fees of United States attorneys are covered by 28 U.S.C. § 1923.

Changes are made in phraseology.

## § 15-703. Deposit for costs—Security for costs by non-residents.

(a) At the commencement of every suit in the United States District Court for the District of Columbia the plaintiff shall deposit at least ten dollars with the clerk, to be appropriated toward the costs of the suit. The court may prescribe rules as to any further costs to be paid by either the plaintiff or defendant during the progress of the case, and as to the collection thereof. Upon the termination of the case any surplus of costs shall be refunded by the clerk.

(b) The defendant in a suit instituted by a non-resident of the District of Columbia, or by one who becomes a non-resident after the suit is commenced, upon notice served on the plaintiff or his attorney after service of process on the defendant, may require the plaintiff to give security for costs and charges that may be adjudged against him on the final disposition of the cause. This right of the defendant does not entitle him to delay in pleading, and his pleading before the giving of the security is not a waiver of his right to require security for costs. In case of noncompliance with these requirements, within a time fixed by the court, judgment of non-suit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in an amount fixed by the court.

A nonresident, at the commencement of his suit, may deposit with the clerk such sum as the court deems sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1506 (Mar. 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

## CROSS REFERENCES

Costs in Court of General Sessions, see §§ 15-709 to 15-712.

Fees and costs in small claims court, see §§ 16-3903 and 16-3909.

## § 15-704. Advance payment of costs and fees.

(a) Costs and fees for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills and chargeable to others than the United States or the District of Columbia are payable in advance and shall be collected pursuant to such rules and regulations, not incompatible with law, as are prescribed by the court.

(b) Section 15-706 does not prohibit the court from directing, by rule or standing order, the collection, at the time the services are rendered, of the fees enumerated in that section from either party, but all such fees shall be taxed as costs in the respective cases. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on the D.C. Code, 1961 ed., §§ 11-1507, 11-1509 (Mar. 3, 1901, ch. 854, §§ 177, 1110, 31 Stat. 1219, 1363; June 30, 1902, ch. 1329, 32 Stat. 527; June 9, 1910, ch. 277, 36 Stat. 464; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24; Oct. 4, 1961, Pub. L. 87-349, § 1, 75 Stat. 769).

Section consolidates parts of section 11-1507 and 11-1509 of D.C. Code, 1961 ed. For remainder of those sections, see tables.

The exception as to fees chargeable to the District of Columbia is inserted pursuant to the section of this chapter exempting the District from the payment of court costs.

The provision of 28 U.S.C. § 1914(c) that each district court by rule or standing order may require advance payment of fees does not apply to the District of Columbia under subsection (d) of that section.

Changes are made in phraseology.

## CROSS REFERENCE

Liability for costs in suits against Board of Education, see § 31-101.

## § 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.

(a) The District of Columbia or any officer thereof acting therefor may not be required to pay court costs or fees in any court in and for the District of Columbia.

(b) The District of Columbia may not be required to pay fees to the clerk of the United States Court of Appeals for the District of Columbia, or to the marshal of the District, and is entitled to the services of the marshal in the service of all civil process.

(c) The United States and the District of Columbia may not be required to pay fees and costs for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills.

(d) Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is required by law or rule of court. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-1507, 11-1519, (Mar. 3, 1901, ch. 854, § 177, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527; June 9, 1910, ch. 277, 36 Stat. 464; July 15, 1939, ch. 281, 53 Stat. 1009; June 12, 1940, ch. 333, § 1, 54 Stat. 307; June 28, 1944, ch. 300, § 16, 58 Stat. 533; Oct. 4, 1961, Pub. L. 87-349, § 1, 75 Stat. 769).

Section consolidates part of section 11-1507 of D.C. Code, 1961 ed., with section 11-1519 of the Code. For remainder of section 11-1507, see tables.

Subsection (a) is from section 11-1519 of D.C. Code, 1961 ed., which first appeared in an appropriation act in 1939 and was made permanent in 1944.

Subsections (b)–(d) are from section 11-1507 of D.C. Code, 1961 ed. A provision of that section that the United States shall not be required to pay fees and costs for services rendered by the clerk of the District Court is omitted as superseded by 28 U.S.C. § 2412.

A provision similar to subsection (d) of this section, exempting the United States from giving security for damages or costs, is found in 28 U.S.C. § 2048. See also Rules 62(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

## § 15-706. Clerk's fees in United States District Court for the District of Columbia.

(a) For filing the following-named cases and for all services to be performed therein, except as otherwise provided by law, the clerk of the United States District Court for the District of Columbia shall charge and collect the following fees:

- (1) civil actions, \$10;
- (2) lunacy cases, \$10;
- (3) deportation cases, \$10;
- (4) requisition cases, \$10;
- (5) habeas corpus cases, \$10;
- (6) plea of title cases, \$10;
- (7) District court cases, \$15;
- (8) condemnation cases, \$15;
- (9) libel cases, \$15;
- (10) feeble-minded cases, \$7.50;
- (11) change of name cases, \$5;
- (12) intervening petitions in any case, \$5;
- (13) cases substituting trustees, \$4;
- (14) docketing judgments of the District of Columbia Court of General Sessions, as provided in section 15-132; and
- (15) limited partnership cases, \$3.

(b) Upon the perfecting of an appeal to the United States Court of Appeals for the District of Columbia Circuit, the clerk shall charge and collect from the party or parties prosecuting the appeal an additional fee of \$5 in the action or proceeding.

(c) For each additional trial or final hearing, upon a reversal by the United States Court of Appeals for the District of Columbia Circuit, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, the clerk shall charge and collect from the party or parties securing the reversal, new trial, or rehearing, the further sum of \$5.

(d) In a case where attachments, executions, or rules are issued, the clerk shall charge and collect the following fees in addition to the fees otherwise provided:

- (1) for each writ of attachment, \$1, and each copy, \$1;
- (2) for each writ of execution, \$1.50;
- (3) for each rule 50 cents, and each copy certified, 50 cents;
- (4) for each writ of ne exeat, \$1;
- (5) for each bench warrant, \$1;
- (6) for each warrant of arrest, \$1.

(e) In addition to the fees for services rendered in cases hereinbefore enumerated the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

- (1) for issuing a writ or subpoena for a witness not in a case instituted or pending in the court from which it is issued, 50 cents for each writ and copy or subpoena and copy;
- (2) for filing and indexing any paper not in a case or proceeding, 25 cents;
- (3) for administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 50 cents;
- (4) for an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents;



(5) for taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional for the stenographer;

(6) for copy of a record, entry, or other paper and the comparison thereof, 15 cents for each folio of one hundred words;

(7) for searching the records of the court for judgments, decrees, or other instruments, or marriage records, 50 cents for each year covered by the search and for certifying the result, 50 cents;

(8) for making and comparing a transcript of record on appeal, 15 cents for each folio of one hundred words;

(9) for comparing a transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words;

(10) for administering oath of admission of attorneys to practice, \$2 each; for certificate of admission to be furnished upon request, \$2 additional;

(11) for each marriage license, \$2;

(12) for each certified copy of marriage license and return, \$1;

(13) for each certified copy of application for marriage license, \$1;

(14) for registering clergymen's authorizations to perform marriages and issuing certificate, \$1;

(15) for each certificate of official character, including the seal, 50 cents;

(16) for filing and recording each notice of mechanic's lien, \$1;

(17) for entering release of mechanic's lien, 50 cents for each order of lienor; 75 cents for each undertaking of lienor;

(18) for recording physicians', optometrists', and midwives' licenses, 50 cents each;

(19) for the clerks' attendance on the court while actually in session, \$5 per day;

(20) for all services rendered to the United States in cases in which the United States is a party of record, \$5.

(Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1509 (Mar. 3, 1901, ch. 854, § 1110, 31 Stat. 1363; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24).

In subsection (a) "civil actions, \$10" is substituted for "Actions at law, \$10; suits in equity, \$10" because of Rule 2 of the Federal Rules of Civil Procedure providing for one form of action known as a "civil action".

The phrase "adoption cases, \$5" is omitted because these cases are now brought in the Domestic Relations Branch of the Court of General Sessions.

In lieu of the fee of \$2.50 for docketing judgments of the Court of General Sessions a reference is inserted to section 15-132 herein which fixes this fee at 50 cents.

Subsection (b) of this section is similar to 28 U.S.C. § 1917, and may be superseded by that section, which also fixes the fee at \$5.

In subsection (d), "scire facias proceedings" and "for each writ of scire facias, \$1, and each copy \$1" are omitted because Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias and provided that relief theretofore available by that writ may be obtained by appropriate action or motion.

Provisions of section 11-1509 of D.C. Code, 1961 ed., that the clerk of the United States District Court is not

required to account for fees not collected by him in criminal cases, and that surplus fees collected by the clerk shall be deposited in the treasury to the credit of the District of Columbia and the United States in the proportions required by law are omitted as covered by 28 U.S.C. § 751, which governs payment in the Treasury, and by section 11-330 of D.C. Code, 1961 ed., which is being transferred to Title 47 thereof, and which governs the crediting of fees to the District of Columbia and the United States.

For provisions of section 11-1509 on advance payment of fees, see tables.

Changes are made in phraseology.

#### CROSS REFERENCE

Payment of fees by District of Columbia or officers, see, § 15-705.

#### § 15-707. Probate Court fees.

(a) The Register of Wills, clerk of the Probate Court, may demand and receive in advance, for services performed by him, the following fees:

(1) for filing petition or caveat, 50 cents;

(2) for filing other papers, each 5 cents;

(3) for making docket and indexes and taxing costs in each case, \$2.50;

(4) for additional docket entries, each 25 cents;

(5) for issuing subpoena to witness and copies, each, 25 cents;

(6) for issuing subpoena duces tecum, 50 cents;

(7) for issuing summons, citation, commission, rule, warrant, notice of trial, process, execution, attachment, or writ, each \$1;

(8) for issuing notices to creditors, distributees, and legatees, each 50 cents;

(9) for copies of summons, citation, rule, warrant, or other process, order of publication, notice to creditors, legatees, and distributees, attested under seal and delivered for service or publication, each 50 cents;

(10) for taking and recording every bond, \$1.50;

(11) for a probate of will, inventory, or account, \$1;

(12) for issuing letters testamentary or of administration, collection, or guardianship, \$1;

(13) for issuing certificate of appointment of executor, administrator, collector, or guardian, \$1;

(14) for entering panel of jury and swearing them, 50 cents;

(15) for administering an oath or affirmation, 15 cents;

(16) for passing a claim against an estate and entering in docket of claims, 30 cents;

(17) for drawing depositions of witnesses, per folio, 15 cents;

(18) for every search of the files or records outside of a regular proceeding, where no other service is performed for which a fee is allowed, \$1;

(19) for examining or stating an account of executor, administrator, collector, guardian, receiver, or trustee, not exceeding one hundred items, \$5;

(20) for each additional item, 2 cents;

(21) for stating the distribution of an estate, for each distributee, \$1;

(22) for a copy of an account, not exceeding one hundred items, \$1.50;

(23) for each additional item, 2 cents;

(24) for recording all papers, per folio, 15 cents;

(25) for copies of all papers not otherwise specified, per folio, 12 cents;



(26) for every certificate under seal, not otherwise specified, 50 cents.

(b) Where the estate does not exceed two hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees may not exceed ten dollars.

(c) The court may allow to the Register reasonable fees for any service he may render not specified by section 15-706. (Dec. 23, 1963, 77 Stat. 534, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1503 (Mar. 3, 1901, ch. 854, § 1111, 31 Stat. 1364; June 30, 1902, ch. 1329, 32 Stat. 541).

Changes are made in arrangement and phraseology.

#### § 15-708. Deposit for probate court fees.

For proceedings in the probate court deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1505 (Mar. 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527).

Changes are made in phraseology.

#### § 15-709. Fees and costs in Court of General Sessions in civil and criminal cases.

(a) The District of Columbia Court of General Sessions may prescribe fees and costs, including the fee to be paid for a jury trial. Section 15-702(a), relating to docket fees of attorneys and proctors, does not apply to the Court of General Sessions.

(b) Fees for service by the United States marshal of process issued by the Court of General Sessions shall be:

(1) in civil actions, as prescribed by rule of the United States District Court for the District of Columbia; and

(2) in criminal actions, the same as fees prescribed for like service in the District Court.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748, 11-748e, 11-751a, 11-755, 11-756 note (R.S.D.C., § 1068; Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 55 Stat. 623; Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of section 11-748 of D.C. Code, 1961 ed., section 11-748e thereof, and act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312 (D.C. Code 1961 ed., § 11-756 note).

Subsection (a) is from act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312, cited above, which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Section 11-755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the 1942 merger, sub-

sec. (a) provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same jurisdiction and powers as those previously vested in the two former courts. The remainder of above-cited section 11 of the 1921 act, authorizing rules of practice, pleading, and procedure, is omitted as superseded by that part of section 11-756 of D.C. Code, 1961 ed., which is carried into section 13-101 herein.

Subsection (b) of this section is from section 11-748e of D.C. Code, 1961 ed., which, until the above-mentioned 1942 merger, related to the Police Court, and section 11-748 thereof, which related to justices of the peace, as enacted in 1901, and was changed to refer to the first Municipal Court in 1909.

In these consolidated and revised provisions, the name of the court is changed to the District of Columbia Court of General Sessions, to conform with section 11-751a of D.C. Code, 1961 ed., enacted by section 1 of the act of Oct. 23, 1962, cited above. Section 11-751a, which is also cited as one of the sources of this section, so changed the name of the court.

The provisions of section 11-748 of D.C. Code, 1961 ed., relating to supersedeas or stay of judgment of the Municipal Court is omitted as covered by Rules 62 and 73 of the Civil Rules of the court (now, Court of General Sessions). For remainder of section 11-748, see tables.

Changes are made in phraseology.

#### § 15-710. Fees and costs in Domestic Relations Branch of Court of General Sessions.

The judges of the Domestic Relations Branch of the District of Columbia Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the fees, charges, and costs in actions and proceedings in the Domestic Relations Branch. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-766 (Apr. 11, 1956, ch. 204, § 110, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is from part of section 11-766 of D.C. Code, 1961 ed. For remainder of the section, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

#### § 15-711. Deposit or security for costs in Court of General Sessions.

Nonresidents of the District of Columbia may commence suits in the District of Columbia Court of General Sessions without first giving security for costs, but upon motion may be required to give security pursuant to section 15-703. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-719, 11-751a, 11-755 (Mar. 3, 1921, ch. 125, § 7, 41 Stat. 1131; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 514; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-719 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court. Section 11-755 is also cited as one of the sources of this section because, in connection with the 1942 merger, subsec. (a) thereof provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same powers and jurisdiction that were vested in the two former courts and the judges thereof. After the



1962 amendment, subsec. (a) of section 11-755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction that were vested in the Municipal Court for the District of Columbia and the judges thereof. For remainder of section 11-755, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

#### § 15-712. Waiver of prepayment of costs in Court of General Sessions.

When satisfactory evidence is presented to the District of Columbia Court of General Sessions or one of the judges thereof that the plaintiff in a suit is indigent and unable to make deposit of costs, the court or judge may permit the prosecution of the suit without the prepayment or deposit of costs. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-720, 11-751a, 11-755 (Mar. 3, 1921, ch. 125, § 8, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-720 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Sections 11-751a and 11-755 are also cited as sources of this section for the same reasons given in revision note to section 15-711.

The provisions, as herein revised, relate to the District of Columbia Court of General Sessions.

Provisions or waiver of prepayment of costs in the Small Claims and Conciliation Branch of the Court of General Sessions are found in section 16-3903 herein. Proceedings in forma pauperis in the District Court are covered by 28 U.S.C. § 1915.

Changes are made in phraseology.

#### § 15-713. Deposits for jury trials in Court of General Sessions.

Deposits made on demands for jury trials in accordance with rules prescribed by the District of Columbia Court of General Sessions under authority granted in section 15-709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-749, 11-751a (June 7, 1924, ch. 302, 43 Stat. 564, and certain provisions from subsequent appropriation acts, including act Apr. 8, 1960, Pub. L. 86-412, § 1, 74 Stat. 21, the 1960 act having been continued for the 1962 and 1963 fiscal years by acts Sept. 21, 1961, Pub. L. 87-265, § 15, 75 Stat. 564, and Oct. 23, 1962, Pub. L. 87-867, § 15, 76 Stat. 1155, respectively; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

The provisions are taken from section 11-749 of D.C. Code, 1961 ed. Section 11-751a of the Code, enacted by the act of Oct. 23, 1962, Pub. L. 87-873, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

#### § 15-714. Witness fees for attendance in Court of General Sessions.

(a) There shall be paid to witnesses in criminal cases in the District of Columbia Court of General Sessions, not exceeding seventy-five cents per diem for each day of attendance, to be allowed only in the discretion of the court.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the District of Columbia Court of General Sessions other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

##### CROSS REFERENCES

Fees of jurors and witnesses at inquests, see § 11-1906.  
Per diem and mileage for witnesses in courts of the United States, see U.S. Code, Title 28, § 1821 et seq.

#### § 15-715. Witness fees in prosecutions for cruelty to children or animals.

An officer or member of the Humane Society is not entitled to any fee as a witness in the prosecution of a case of cruelty to children or animals. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-755b (June 25, 1892, ch. 135, § 1, 27 Stat. 60; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190).

Section is from the last clause of section 11-755b of D.C. Code, 1961 ed.

The provision of section 11-755b that the municipal courts (now Court of General Sessions) have jurisdiction in all cases arising under section 32-209 is omitted as obsolete, since section 32-209 now refers to the juvenile court under a 1906 act.

The provision of section 11-755b that witnesses in case of cruelty to children or animals in the District of Columbia be allowed the same witness fees as allowed in other cases by law is omitted as unnecessary.

Changes are made in phraseology.

#### § 15-716. Advances to Court of General Sessions clerk for witness fees.

The Board of Commissioners or its authorized representative may advance to the clerk of the District of Columbia Court of General Sessions upon requisition previously approved by the Board of Commissioners or its authorized representative, sums of money not exceeding \$500 at any one time, to be used for the payment of witness fees. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-1521 (June 30, 1945, ch. 209, § 1, 59 Stat. 281; July 9, 1946, ch. 544, § 1, 60 Stat. 510).

"Board of Commissioners or its authorized representative" is substituted for "disbursing officer of the District of Columbia" and for "Auditor of the District of Columbia" pursuant to Presidential Reorganization Plan No. 5 of 1952 and the Board's Reorganization Order No. 121, 57-3276, dated Dec. 12, 1957, as amended. See revision note under section 11-984 herein.

Changes are made in phraseology.

##### CROSS REFERENCE

General provisions for advancement of money by disbursing officers, see § 1-263.

## TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Chap.	Sec.
1. Account.....	16-101
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5. Attachment and Garnishment.....	16-501
7. Criminal Proceedings in the Court of General Sessions.....	16-701
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### Chapter 1.—ACCOUNT

Sec.
16-101. Parties.

#### § 16-101. Parties.

An action of account shall and may be brought against the executor and administrator of every guardian, bailiff and receiver; and by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such a joint-tenant or tenant in common. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-101 (4 Ann. ch. 16, § 27, 1705; Kilty Rep., p. 247; Alex. Br. Stat. p. 664; Comp. Stat. D.C., p. 447, § 34).

Changes are made in phraseology.

### Chapter 3.—ADOPTION

Sec.
16-301. Jurisdiction—Rules.
16-302. Persons who may adopt.
16-303. Persons adopted.
16-304. Consent.
16-305. Petition for adoption.
16-306. Notice of adoption proceedings.
16-307. Investigation, report, and recommendation.
16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.
16-309. Adoption proceedings.
16-310. Finality of decrees of adoption.
16-311. Sealing and inspection of records and papers.
16-312. Legal effects of adoption.
16-313. Child as including adopted person.
16-314. Birth certificates.

#### § 16-301. Jurisdiction—Rules.

(a) Subject to subsection (b) of this section, the Domestic Relations Branch of the District of Columbia Court of General Sessions has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

(1) petitioner is a legal resident of the District of Columbia;

(2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or

(3) the child to be adopted is in the legal care, custody, or control of the Commissioners or a child-placing agency licensed under the laws of the District.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 16-210 (June 8, 1954, ch. 272, § 3, 68 Stat. 241; Apr. 11, 1956, ch. 204, § 107(b), 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 2 of act June 8, 1954, ch. 272 (68 Stat. 241), cited above, which was classified to section 16-209 of D.C. Code, 1961 ed., contained provisions defining four terms as used in the other provisions of chapter 2 of Title 16 of the Code (carried into this chapter), as follows: "Commissioners", as meaning the Board of Commissioners of the District of Columbia, or their designated agents; "District", as meaning the District of Columbia; "licensed child-placing agency", as meaning a child-placing agency licensed under the laws of the District of Columbia; and "adoptee", as meaning a person with respect to whose adoption a petition had been filed under the above-mentioned Act or with respect to whom an interlocutory or final decree of adoption was in effect. The section is omitted from this revised Part as unnecessary in view of the rewording of the other provisions of chapter 2 of Title 16 of D.C. Code, 1961 ed., that are carried into this chapter. It should be perfectly clear that "Board of Commissioners", or "Board", as used in the revised provisions, means only the Board of Commissioners of the District of Columbia or the Board's designated agents; that "District", as used in this chapter, means only the District of Columbia; and that "licensed child-placing agency" means only a child-placing agency licensed under the laws of the District of Columbia. With respect to "adoptee", the word "prospective" is inserted before that term whenever it is necessary to designate a person whose adoption is proposed but who has not reached the status of an adoptee by interlocutory or final decree.

Changes are made in phraseology.

#### CROSS REFERENCE

Domestic Relations Branch, see § 11-1101, et seq.



### § 16-302. Persons who may adopt.

Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the prospective adoptee, the natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition must be amended accordingly. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-211 (June 8, 1954, ch. 272, § 4, 68 Stat. 241).

Word "prospective" is inserted before "adoptee". See revision note under section 16-301 herein.

Changes are made in phraseology.

### § 16-303. Persons adopted.

A person, whether a minor or an adult, may be adopted. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-212 (June 8, 1954, ch. 272, § 5, 68 Stat. 241).

A minor change is made in phraseology.

### § 16-304. Consent.

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Board of Commissioners of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32-786.

(b) Consent to a proposed adoption of a person under twenty-one years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are or were married and are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the mother in the case of a prospective adoptee born out of wedlock, unless the prospective adoptee has been legitimated according to the laws of any jurisdiction, in which case the consent of the father is also required if he is alive; or

(D) from the mother of a prospective adoptee born in wedlock, if the illegitimacy of the prospective adoptee has been established to the satisfaction of the court; or

(E) from the court-appointed guardian of the prospective adoptee; or

(F) from a licensed child-placing agency or the Board of Commissioners in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Board or

licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(G) from the Board of Commissioners in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

(f) A person over twenty-one years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-213 (June 8, 1954, ch. 272, § 6, 68 Stat. 241).

"Board of Commissioners of the District", "Board of Commissioners", or "Board", is substituted for "Commissioners", and "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16-301 herein.

Changes are made in phraseology and arrangement.

### § 16-305. Petition for adoption.

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of ----- for adoption." The petition or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Board of Commissioners or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When

any of the above facts is known to the Board of Commissioners, or a licensed child-placing agency that as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Board or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-214 (June 8, 1954, ch. 272, § 7, 68 Stat. 242).

Word "prospective" is inserted before "adoptee" in a number of places, and "Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16-305 herein.

Changes are made in phraseology.

### § 16-306. Notice of adoption proceedings.

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-215 (June 8, 1954, ch. 272, § 8, 68 Stat. 243).

Changes are made in phraseology.

### § 16-307. Investigation, report, and recommendation.

(a) Except as provided by section 16-308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Board of Commissioners, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

(1) an investigation of:

(A) the truth of the allegations of the petition;

(B) the environment, antecedents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge;

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory

decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-216 (June 8, 1954, ch. 272, § 9, 68 Stat. 243).

"Board of Commissioners" is substituted for "Commissioners", and, in several places "prospective" is inserted before "adoptee". See revision note under section 16-301 herein.

Changes are made in phraseology and arrangement.

### § 16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) the prospective adoptee is an adult; or

(2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-217 (June 8, 1954, ch. 272, § 10, 68 Stat. 244).

Word "prospective" is inserted before "adoptee". See revision note under section 16-301 herein.

Changes are made in phraseology and arrangement.

### § 16-309. Adoption proceedings.

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16-307 to the court and thereupon the court shall proceed to act upon the petition.

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education; and

(3) the adoption will be for the best interests of the prospective adoptee.

(c) A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months.

(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory decree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.



(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.

(f) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-218 (June 8, 1954, ch. 272, § 11, 68 Stat. 244).

In subsec. (a) of this section, a reference to section 16-215 of D.C. Code, 1961 ed., is changed to refer to section 16-307 herein, which is based on section 16-216 of the Code, to correct an apparent error in the 1954 act.

Word "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16-301 herein.

Changes are made in phraseology and arrangement.

### § 16-310. Finality of decrees of adoption.

An attempt to invalidate a final decree of adoption, by reason of a jurisdictional or procedural defect may not be received by any court of the District, unless regularly filed with the court within one year following the date the final decree became effective. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-219 (June 8, 1954, ch. 272, § 12, 68 Stat. 244).

Changes are made in phraseology.

### § 16-311. Sealing and inspection of records and papers.

From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-221 (June 8, 1954, ch. 272, § 14, 68 Stat. 245).

Changes are made in phraseology.

### § 16-312. Legal effects of adoption.

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adoptor. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural

parents is the spouse of the adoptor, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-222 (June 8, 1954, ch. 272, § 15, 68 Stat. 245).

Changes are made in phraseology.

### § 16-313. Child as including adopted person.

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-224 (June 8, 1954, ch. 272, § 17, 68 Stat. 246).

Changes are made in phraseology.

### § 16-314. Birth certificates.

(a) Notice of a final decree of adoption shall be sent to the Board of Commissioners. Unless otherwise requested in the petition by the adopters, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court.

(b) If the adoption occurred outside the District either before or after August 25, 1937, upon filing with the Board of Commissioners a certified copy of the final decree of adoption, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption. The sealed package may be opened only by order of a court of competent jurisdiction.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Board of Commissioners shall cause to be made a new record of the birth in the new

name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-223 (June 8, 1954, ch. 272, § 16, 68 Stat. 245).

"Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16-301 herein.

Changes are made in phraseology.

### § 16-315. Prior proceedings.

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954. (Dec. 23, 1963, 77 Stat. 542, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-225 (June 8, 1954, ch. 272, § 18(b), 68 Stat. 246).

Section is from subsec. (b) of section 18 of act June 8, 1954. Subsec. (a) of that section repealed act August 25, 1937, ch. 774, 50 Stat. 806, which was classified to former sections 16-201 to 16-207 of D.C. Code, 1961 ed.

In the first sentence, words "shall have no retroactive effect" are changed to "have no effect prior to June 8, 1954" so that this section will continue to apply as of the date of its original enactment in 1954.

The remaining provisions of section 16-225 are retained in this section to preclude any question as to inheritance rights of an adopted child. These rights were changed (for future adoptees), first, by the act of August 25, 1937, referred to above, and second, by the act of June 8, 1954. Provisions of the latter act are carried into this chapter.

Changes are made in phraseology.

## Chapter 5.—ATTACHMENT AND GARNISHMENT

### SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

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### SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

#### § 16-501. Attachment before judgment—Affidavit and bond.

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the District of Columbia Court of General Sessions, for the recovery of:

- (1) specific personal property;
- (2) a debt; or



(3) damages for the breach of a contract, express or implied.

(b) In an action specified by subsection (a) of this section, the plaintiff, his agent, or attorney, may file an affidavit as provided by subsections (c) and (d) of this section either at the commencement of the action or pending the action.

(c) The affidavit shall comply with the following requirements:

(1) show the grounds of plaintiffs' claim;

(2) set forth that plaintiff has a just right to recover what is claimed in his complaint;

(3) where the action is to recover specific personal property, state the nature and, according to affiant's belief, the value of the property and the probable amount of damages to which plaintiff is entitled for the detention thereof;

(4) where the action is to recover a debt, state the amount thereof; and

(5) where the action is to recover damages for breach of a contract set out, specifically and in detail, the breach complained of and the actual damage resulting therefrom.

(d) The affidavit shall also state one of the following facts with respect to defendant:

(1) defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months;

(2) he evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District;

(3) he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him;

(4) he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or

(5) he fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

(e) Before a writ of attachment and garnishment is issued, the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may sustain by reason of the wrongful suing out of the attachment.

(f) If the plaintiff files an affidavit and bond as provided by this section, the clerk shall issue a writ of attachment and garnishment, to be levied upon as much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff. (Dec. 23, 1963, 77 Stat. 543, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 16-301 (Mar. 3, 1901, ch. 854, § 445, 31 Stat. 1258; Apr. 19, 1920, ch. 153, 41 Stat. 563; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of

the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

References to "any action at law" and "his declaration" are changed to "any civil action" and "his complaint" to comply with present procedure under the rules.

In the 1901 Code, as continued in D.C. Code, 1961 ed., there were two groups of sections relating to attachment and garnishment. One group was Chapter 13, Attachments, of the 1901 Code and Chapter 3, Attachment and Garnishment, of Title 16 of the 1961 edition and is set out in this subchapter. The other group was in Chapter 26, Execution, of the 1901 Code and Chapter 3, Proceedings in Aid of Execution, of Title 15 of the 1961 edition, and is set out as subchapter II of this chapter, relating to attachment and garnishment after judgment in aid of execution.

Logically it would seem that, except for provisions governing the grounds for issuance of the writ and its relationship to the proceedings in the action in which it is issued, the procedure in attachment should be the same whether it is the usual attachment issued before judgment or an attachment issued after judgment in aid of execution, and therefore, that the provisions of subchapter I of this chapter would apply to attachment after judgment unless an inconsistent provision appears in subchapter II. But subchapter II, as enacted in 1901, contains a number of sections that repeat the provisions of sections of subchapter I, which would lead to the contrary assumption that subchapter II, relating to attachment after judgment, was intended to be complete in itself without reference to subchapter I. The difficulty is that some sections in subchapter I which would be expected to apply to attachment either before or after judgment are not repeated in subchapter II. For example, see section 16-528 of subchapter I which is from section 16-325 of D.C. Code, 1961 ed., and provides that a judgment of condemnation against the garnishee protects him against a claim by the defendant for the property or credits condemned.

If these two subchapters were originally intended to be independent of each other, additional problems arise with respect to subsequent acts which amend one subchapter without amending the corresponding section of the other, and acts which do not specify whether they apply to attachments before or after judgment or both. For examples, see sections 16-513, 16-514, 16-521, 16-533, and 16-551 herein.

Since the scope of this revision is limited to improvements in arrangement and phraseology, without changing the substance of the law, it is not possible to resolve these questions here. However, the provisions relating to the two types of attachments have been carried into this one chapter so that the corresponding provisions and the court decisions under them may be more easily read together.

Subchapter III of this chapter is derived from a 1959 act, as indicated in the notes under the individual sections therein.

The provisions of this chapter are continued in force by rule 64 of the Federal Rules of Civil Procedure under which certain provisional and final remedies, including attachment and garnishment are available under the circumstances and in the manner provided by the law of the "state" in which the district court is held, subject to certain qualifications.

Changes are made in the arrangement and phraseology of this section.

#### CROSS REFERENCES

Attachment and garnishment after judgment see §§ 16-541 to 16-555.

Attachment to enforce landlord's lien, see § 45-916.

Benefits from fraternal benefit association not subject to attachment or garnishment, see § 35-911.

Benefits payable under unemployment compensation law not subject to levy or attachment, see § 46-318.

Bonds generally, see § 28-2401 et seq.

Exemption of insurance benefits from attachments and garnishment, see §§ 35-717, 35-718.

Exemption of proceeds from life insurance, see § 30-213.

Exemption of sums recovered for wrongful death, see § 16-2703.

Garnishment of goods in possession of warehouseman, surrender of receipt, see § 28-1919.



Old-age assistance given under the Social Security Act not subject to attachment or levy, see § 46-204.

Teacher's retirement annuity not subject to attachment, see § 31-718.

The provisions of this chapter relating to attachment apply to proceedings in the Court of General Sessions, see § 16-533.

#### § 16-502. Service of notice—Publication.

(a) A writ issued pursuant to section 16-501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (District of Columbia Court of General Sessions) for the District of Columbia.

A B, plaintiff,	} Civil Action No. ____.
versus	
C D, defendant,	

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this \_\_\_\_ day of \_\_\_\_\_, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

\_\_\_\_\_, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders. (Dec. 23, 1963, 77 Stat. 544, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-302 (Mar. 3, 1901, ch. 854, § 446, 31 Stat. 1259; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In the form of notice set out in subsec. (b), a parenthetical reference to the Court of General Sessions is inserted for the purpose of completeness.

Changes are made in phraseology.

#### § 16-503. Attachment for debts not due.

A creditor may maintain an action and have an attachment against his debtor's property and credits, where his debt is not yet due and payable, if the plaintiff, his agent, or attorney files in the clerk's office, at the commencement of the action, an affidavit, supported by testimony of one or more witnesses, showing the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of

his property from the District with the intent or to the effect of defeating just claims against him if only the ordinary process of law is used to obtain judgment against him, and if he also complies with the condition as to filing a bond prescribed by section 16-501. The plaintiff may not have judgment before his claim becomes due. If the attachment is quashed the action shall be dismissed, but without prejudice to a future action. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-306 (Mar. 3, 1901, ch. 854, § 450, 31 Stat. 1260).

Changes are made in phraseology.

#### § 16-504. Additional attachments.

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-304 (Mar. 3, 1901, ch. 854, § 448, 31 Stat. 1259).

#### § 16-505. Sufficiency of plaintiff's bond.

The defendant or any other person interested in the proceedings who is not satisfied with the sufficiency of the surety or with the amount of the penalty named in the bond filed pursuant to section 16-501, may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court. If the plaintiff fails to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-305 (Mar. 3, 1901, ch. 854, § 449, 31 Stat. 1260).

Changes are made in phraseology.

#### § 16-506. Traversing affidavits—Quashing writ of attachment—Trial of issues.

If the defendant files affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment. When, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney, the court shall quash the writ of attachment. This issue may be tried by the court or a judge at chambers after three days' notice. The issue may be tried as well upon oral testimony as upon affidavits. If the court deems it expedient, a jury may be impaneled to try the issue. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-307 (Mar. 3, 1901, ch. 854, § 451, 31 Stat. 1260).

Changes are made in phraseology.



CROSS REFERENCE

Garnishee entitled to benefit of this section, see § 16-529.

**16-507. Property subject to attachment—Liens—Priorities.**

(a) An attachment may be levied on the lands and tenements, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether the defendant's title to the property is legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business.

(b) An attachment shall be a lien on the property attached from the date of its delivery to the marshal. When different persons obtain attachments against the same defendant the priorities of the liens of the attachments shall be according to the dates when they were so delivered to the marshal. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-308 (Mar. 3, 1901, ch. 854, § 452, 31 Stat. 1260).

Property subject to attachment after judgment, see section 16-544 herein. Priority of attachments against same judgment debtor, see section 16-545 herein.

Changes are made in phraseology.

**§ 16-508. Attachment of real property.**

An attachment is sufficiently levied on the lands and tenements of the defendant by:

(1) mentioning and describing the property in an indorsement on the attachment, made by the officer to whom it is delivered for service, to the following effect:

"Levied on the following estate of the defendant, A B, to wit: (Here describe) this — day of —, C D, Marshal."; and

(2) serving a copy of the attachment, with the indorsement, and the notice required by section 16-502, on the person, if any, in possession of the property.

(Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-309 (Mar. 3, 1901, ch. 854, § 453, 31 Stat. 1260).

Changes are made in phraseology.

**§ 16-509. Attachment of personal property—Undertaking by defendant or person in possession.**

(a) An attachment shall be levied upon personal chattels by the officer taking them into his possession and custody, unless the defendant gives the officer his undertaking to be filed in the cause, with sufficient security, substantially in the form set forth in subsection (b) of this section, or unless the person in whose possession the property is attached gives the officer his undertaking to be filed in the cause substantially in the form set forth in subsection (c) of this section. In cases where such undertakings are given, the attachment is sufficiently levied by the taking of the undertaking.

(b) An undertaking by the defendant shall contain the substance of the following form:

A B, plaintiff,	} Civil Action No. —.
versus	
C D, defendant.	

The defendant and —, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the — day of —, anno Domini nineteen hundred —, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to the property, which judgment may be rendered against any or all the parties whose names are hereto signed.

(Signed)

C D.  
E F.

(c) An undertaking by the person in whose possession the property is attached shall contain the substance of the following form:

A B, plaintiff,	} Civil Action No. —.
versus	
C D, defendant.	

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of — dollars; and now, therefore, E F and G H, as surety, appearing in the action, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all the undersigned for the value of the property and costs, to be executed against them, and each of them, unless the property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.  
G H.

The recital of the undertaking in this subsection shall contain a sufficient description of the property and its value ascertained by an appraisement to be made under direction of the officer and returned with the writ. (Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-310 (Mar. 3, 1901, ch. 854, § 454, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530).

Changes are made in arrangement and phraseology.

**§ 16-510. Release of property or credits from attachment—Sufficiency of undertaking.**

(a) Either the defendant or the person in whose possession the property is attached may obtain a release of the property from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him by section 16-509, with security to be approved by the court.

(b) The plaintiff may except to the sufficiency of the undertaking accepted by the marshal and, if the exceptions are sustained, the court shall require

a new undertaking, with sufficient surety, by a day to be named, in default of which the marshal shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through the default.

(c) Either the defendant or the person in whose possession credits are attached may obtain a release of the credits from the attachment by filing an undertaking with security to be approved by the court. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-311 (Mar. 3, 1901, ch. 854, § 455, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section is from part of section 16-311 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16-527.

Changes are made in phraseology.

#### § 16-511. Attachment of credits or partnership interest—Retention of property or credits by garnishee.

(a) An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16-502. The undivided interest of the defendant in a partnership business may be levied upon by a similar service on the defendant's partner or partners.

(b) Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period, the garnishee shall incur no liability for the retention. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86-130, § 5, 73 Stat. 277).

Section is from part of section 16-312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16-512 and 16-513 herein.

Similar provisions as to attachment after judgment are found in section 16-546 herein.

Changes are made in phraseology.

#### § 16-512. Attachment and levy upon wages of non-resident.

An attachment issued under section 16-501 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 16-571 shall be subject to the provisions of subchapter III of this chapter; except that the employer-garnishee shall pay over the wages withheld pursuant to that subchapter only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of that subchapter to any such attachment, the term "judgment debtor", as used therein, means the defendant in the case in which the attachment is

issued; and the term "judgment creditor", as used therein, means the plaintiff in such case. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86-130, § 5, 73 Stat. 277).

Section is from part of section 16-312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16-511 and 16-513 herein.

Changes are made in phraseology.

#### § 16-513. Advance payment of wages to avoid attachment or garnishment.

It is unlawful for an employer to pay salary or earnings to an employee in advance of the time they are due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of the employee, and such an advance payment, as to the attaching creditor, is void.

After the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when the salary or earnings are due and payable made within a period of six months after the date of service of the writ or before the earlier satisfaction of the judgment, whichever is the earlier, is as to such attaching creditor presumed to be in violation of this section and casts upon the employer the burden of proving that the advance payment or payments were not for the purpose of avoiding the attachment of the salary or earnings. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86-130, § 5, 73 Stat. 277).

Section is from part of section 16-312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16-511 and 16-512 herein.

Changes are made in phraseology.

#### § 16-514. Credits or property held for two or more persons or in representative capacity.

When a writ of attachment is served on a garnishee, and the garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for a person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, the credit or property is not subject to withdrawal by any person, but shall be held by the garnishee until the attachment is dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court is a complete discharge of the garnishee from all liability to any person in respect of the credit or property. The provisions of this section do not apply to a credit or property of a partnership. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-333 (May 15, 1928, ch. 568, § 3, 45 Stat. 534).

Changes are made in phraseology.



**§ 16-515. Attachment of judgments and money or property in hands of marshal.**

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that directed by section 16-511 upon the debtor owing the debts. Execution may issue for the enforcement of the judgment or decree, notwithstanding the attachment, but the money collected upon the execution shall be paid into court to abide the event of the proceedings in attachment and applied as the court directs.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-313 (Mar. 3, 1901 ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16-313 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16-516.

Similar provisions as to attachment after judgment are found in section 16-548 herein.

In first sentence of subsec. (b), words "or coroner", which followed "marshal", are omitted as obsolete.

Changes are made in phraseology.

**§ 16-516. Attachment of money or property in hands of executor or administrator.**

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961, ed., § 16-313 (Mar. 3, 1901, ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16-313 of D.C. Code, 1961 ed. For remainder of such section, see tables.

Similar provisions as to attachment after judgment are found in section 16-549 herein.

Changes are made in phraseology.

**§ 16-517. Attachment of other property in replevin action.**

Where the action is to replevy specific personal property and it has not been replevied, other property may be attached in the action to recover damages and costs, and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-321 (Mar. 3, 1901, ch. 854 § 465, 31 Stat. 1263).

Words "and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments" are substituted for "and if the same be adjudged, the

proceedings shall be the same as herein provided in other cases of money claims" for the purpose of clarification.

Changes are made in phraseology.

**§ 16-518. Preservation of property—Sale—Receiver.**

The court may make all orders necessary for the preservation of the property attached during the pendency of the action. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-314 (Mar. 3, 1901, ch. 854, § 458, 31 Stat. 1262).

Phrase "the practice in equity" is changed to "the practice in civil actions" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Similar provisions as to attachment after judgment are found in section 16-550 herein.

Changes are made in phraseology.

**§ 16-519. Defenses by garnishee.**

A garnishee in an attachment proceeding may make any defense available to the defendant in the action in which the garnishment is issued. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-315 (Mar. 3, 1901, ch. 854, § 459, 31 Stat. 1262).

Changes are made in phraseology.

**§ 16-520. Defending against the attachment—Trial of Issues.**

A defendant, any garnishee, party to a forthcoming undertaking, or an officer who might be adjudged liable to the plaintiff by reason of the undertaking being adjudged insufficient, or a stranger to the action who may make claim to the property attached, may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-316 (Mar. 3, 1901, ch. 854 § 460, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16-551 herein.

Changes are made in phraseology.

**§ 16-521. Interrogatories to garnishee—Oral examination.**

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment, or between the time of service and the

filing of his answers to the interrogatories. The garnishee shall file his answers under oath to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-303 (Mar. 3, 1901, ch. 854, § 447, 31 Stat. 1259).

Section 16-552 herein, which formerly contained provisions similar to this section applicable to attachment after judgment, was amended in 1954 to provide that the garnishee's answers should be verified by a written declaration that they are made under the penalties of perjury; but no change was made in this section which requires answers under oath. Whether or not it is desirable to have different forms of verification of the garnishee's answers, depending upon whether the attachment is before or after judgment, is a question beyond the scope of this revision. See note under section 16-501 herein.

Changes are made in phraseology.

#### § 16-522. Traverse of garnishee's answers—Trial of issue—Costs and attorney's fee.

If any garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's claim, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-520. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-317 (Mar. 3, 1901, ch. 854, § 461, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16-553 herein.

Changes are made in phraseology.

#### § 16-523. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment. The court, without other pleading, shall try the issues raised by the claim, with a jury if either party so requests, and make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-318 (Mar. 3, 1901, ch. 854, § 462, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16-554 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath", to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

#### § 16-524. Judgment generally—Condemnation of attached property.

(a) If the defendant in the action has been served with process, final judgment may not be rendered against the garnishee until the action against the defendant is determined.

(b) If in such an action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

(c) If in such an action judgment is rendered in favor of the plaintiff against the defendant, and it appears that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as is directed by sections 16-525 to 16-527. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16-319, 16-320 (Mar. 3, 1901, ch. 854, §§ 463, 464, 31 Stat. 1263).

Section consolidates sections 16-319 and 16-320 of D.C. Code, 1961 ed.

Changes are made in phraseology.

#### § 16-525. Condemnation and sale of property—Proceeds of sale under interlocutory order.

In any form of action, where specific property has been attached and remains under the control of the court, judgment of condemnation of the property shall be entered, and as much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri-facias. If the property was sold under interlocutory order of the court, the proceeds, or as much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-322 (Mar. 3, 1901, ch. 854, § 466, 31 Stat. 1263; June 30, 1902, ch. 1329, 32 Stat. 530.)

Similar provisions as to attachment after judgment are found in section 16-555 herein.

Changes are made in phraseology.

#### § 16-526. Judgment against garnishee.

(a) When a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution may be had thereon. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-323 (Mar. 3, 1901, ch. 854, § 467, 31 Stat. 1263).

Similar provisions as to attachment after judgment are found in section 16-556 herein.

Changes are made in phraseology.



### § 16-527. Judgment in case of undertaking for retention of property or credits.

(a) When property or credits attached are released upon an undertaking given as provided by sections 16-509 and 16-510, and judgment in the action is rendered in favor of the plaintiff, it is a joint judgment against both the defendant and all persons in the undertaking for the appraised value of the property or the amount of the credits.

(b) When the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided by section 16-509, judgment of condemnation of the property shall be rendered as provided by section 16-525, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of the property, not exceeding the plaintiff's claim, the judgment to be entered satisfied if the property is forthcoming and delivered to the marshal, undiminished in value, within ten days after the judgment; otherwise, execution thereon may be had against the garnishee and his surety or sureties; and if the property is so delivered to the marshal the same shall be sold by him under fieri facias to satisfy the judgment of condemnation. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16-311, 16-324 (Mar. 3, 1901, ch. 854, §§ 455, 468, 31 Stat. 1261, 1263; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section consolidates part of section 16-311 of D.C. Code, 1961 ed., with section 16-324 of such Code. The remainder of section 16-311 is set out in section 16-510 herein. Changes are made in phraseology.

### § 16-528. Judgment protects garnishee.

A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-325 (Mar. 3, 1901, ch. 854, § 469, 31 Stat. 1263).

Changes are made in phraseology.

### § 16-529. Attachment in actions for fraudulent conveyances.

(a) Where the ground upon which an attachment is applied for is that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

(b) The garnishee may have the same benefit of section 16-506 as the defendant in the action. If the court is of the opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by the garnishee, the attachment may be quashed as to the garnishee and the levy set aside.

(c) If the levy is not set aside, the garnishee may answer that he was a bona fide purchaser from the

defendant for value without notice of any fraud on the part of the defendant, and the answer shall be held to make an issue, without any further pleading in reply thereto; and issue may be tried as directed by section 16-520.

(d) When the issue is found in favor of the garnishee, judgment shall be rendered in his favor for his costs and a reasonable attorney fee. When the issue is found against the garnishee, but judgment in the action is rendered in favor of the defendant, the attachment shall be dissolved, and garnishee shall recover his costs.

(e) When the issue is found against the garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, and when it appears upon the verdict of a jury that the claim of the plaintiff against the defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed by section 16-524(c). (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16-326 to 16-330 (Mar. 3, 1901, ch. 854, §§ 470 to 474, 31 Stat. 1264).

Section consolidates sections 16-326 to 16-330 of D.C. Code, 1961 ed.

Changes are made in phraseology.

#### CROSS REFERENCE

Fraudulent conveyances, see Title 28, ch. 31.

### § 16-530. Time for trial of issues.

All issues raised by answers to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as may be just. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-331 (Mar. 3, 1901, ch. 854, § 475, 31 Stat. 1264).

Changes are made in phraseology.

### § 16-531. Attachment dockets—Index of attachments.

The clerk of the court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon. The attachments shall be indexed in the names of the defendant and of any person in whose possession the estate may have been levied upon. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-334 (Mar. 3, 1901, ch. 854, § 477, 31 Stat. 1264).

Changes are made in phraseology.

### § 16-532. Other remedies of judgment creditor.

Nothing herein contained deprives a judgment creditor of the right to file a civil action to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by the defendant, made with intent to hinder, delay, and defraud his creditors, set aside. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-332 (Mar. 3, 1901, ch. 854, § 476, 31 Stat. 1264).

Reference to "a bill in equity" is changed to "a civil action" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

### § 16-533. Attachment proceedings in Court of General Sessions.

The provisions of this Code relating to attachments apply to attachment proceedings in the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-733, 11-751a, 16-335 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates sections 11-733 and 16-335 of D.C. Code, 1961 ed., which were from the same provision of the 1921 act.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

## CROSS REFERENCE

Attachment and garnishment, see § 16-501 et seq.

## SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

### § 16-541. Definition and applicability.

As used in this subchapter, "judgment" includes an unconditional decree for the payment of money, and this subchapter is applicable to such a decree. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15-218 of D.C. Code, 1961 ed., cited above, provided, as follows:

"The foregoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment."

In the above-quoted provisions, the parenthetical reference "(this chapter)" referred to chapter 2 of Title 15 of D.C. Code, 1961 ed., in which sections 15-218 and 15-201 to 15-217 thereof, relating to execution of judgment were set out. None of the provisions, relating to attachment and garnishment after judgment, which are carried into this subchapter (sections 15-301 to 15-312 of D.C. Code, 1961 ed.), was set out in such chapter 2. They were set out in chapter 3. However, in the original statute (Code of 1901), the provisions in both of the chapters, including section 1104 thereof, on which section 15-218 was based, were set out in one chapter (ch. 26, §§ 1074-1104, 31 Stat. 1358-1362). Therefore, it would seem that section 1104 made, not only the provisions relating to execution on judgment, but also those relating to attachment after judgment, (this subchapter), applicable to unconditional decrees ("in equity") for the payment of money. Therefore, section 15-218 of D.C. Code, 1961 ed., in addition to being carried into chapter 3 of Title 15 of this revised Part, relating to executions, is carried into this subchapter.

However, it is apparent that all the above-quoted provisions following "scire facias," related only to executions and not to attachments, and accordingly are omitted from this section. Further, the reference to revival

by scire facias is omitted for the same reason stated in revision note under section 15-101 herein. Revival of judgments and decrees is now had by motion and hearing. See rules 54(a) and 81(b) of the Federal Rules of Civil Procedure, and rule 30 of the local rules of the United States District Court for the District of Columbia.

Words "in equity", which followed "unconditional decree", are omitted as obsolete, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. See rule 2 thereof, also rule 2 of the civil rules of the Court of General Sessions.

The remaining provisions are reworded, but without change of substance.

### § 16-542. Issuance of attachment after judgment—Costs.

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias. If costs are unnecessarily multiplied thereby they shall be charged to the party causing the attachment to be issued. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-301 (Mar. 3, 1901, ch. 854, § 1086, 31 Stat. 1359).

For discussion as to the relationship between this subchapter and subchapter I of this chapter, see revision note under section 16-501 herein.

Changes are made in phraseology.

## CROSS REFERENCES

Attachment and garnishment before judgment, see § 16-501 to 16-533.

Provisions for attachment and garnishment as not preventing a bill in equity to enforce a judgment against equitable interests in property, see § 16-532.

### § 16-543. Revival of judgment unnecessary.

Attachment may be issued at any time during the life of the judgment, without issuing an order reviving the judgment previously thereto. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-302 (Mar. 3, 1901, ch. 854, § 1087, 31 Stat. 1359).

Words "an order reviving the judgment" are substituted for "scire facias" pursuant to rule 81(b) of the Federal Rules of Civil Procedure, which abolished the writ of scire facias. See, also, rule 30 of the local rules of the United States District Court for the District of Columbia.

### § 16-544. Property subject to attachment.

An attachment may be levied upon the judgment debtor's goods, chattels, and credits. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-303 (Mar. 3, 1901, ch. 854, § 1088, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541.)

Property subject to attachment generally, see section 16-507 herein.

### § 16-545. Multiple attachments against same judgment debtor.

Only one attachment upon goods, chattels, and credits of a judgment debtor may be satisfied at one time. Where more than one such attachment issued against the same judgment debtor is served on a garnishee the attachments shall be satisfied in the order in which they were served upon the garnishee. This section does not apply with respect to an attachment upon wages to which subchapter III of this chapter applies. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-304 (Mar. 3, 1901, ch. 854, § 1069, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043; Aug. 1, 1959, Pub. L. 86-130, § 2, 73 Stat. 277).

Section is from part of section 15-304 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16.552 herein.

Changes are made in phraseology.

Priority of the liens of attachments, see section 16-507 herein.

## § 16-546. Attachments of credits.

An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15-305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16-547 and 16-548 herein.

Similar provisions as to attachments generally are found in section 16-511(a) herein.

Changes are made in phraseology.

## § 16-547. Retention of property or credits by garnishee.

Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period the garnishee shall incur no liability whatsoever for the retention. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15-305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16-546 and 16-548 herein.

Similar provisions as to attachments generally are found in section 16-511(b) herein. Advance payment of wages to avoid attachment or garnishment, see section 16-513 herein. Credits or property held for two or more persons or in representative capacity, see section 16-514 herein.

Changes are made in phraseology.

## § 16-548. Attachment of judgments and money or property in hands of marshal.

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that prescribed by section 16-546 upon the debtor owing the debts.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code 1961 ed., §§ 15-305, 15-306 (Mar. 3, 1901, ch. 854, §§ 1090, 1091, 31 Stat. 1360; June 30, 1902,

ch. 1329, 32 Stat. 541; Apr. 5, 1939, ch. 37, § 2(b), 53 Stat. 567).

Section consolidates part of sections 15-305 and 15-306 of D.C. Code, 1961 ed. The remainder of the sections is set out in §§ 16-546, 16-547, and 16-549 herein.

Similar provisions as to attachment generally are found in section 16-515 herein.

Reference to the coroner is omitted as obsolete.

Changes are made in phraseology.

## § 16-549. Attachment of money or property in hands of executor or administrator.

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-306 (Mar. 3, 1901, ch. 854, § 1091, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541).

Section is from part of section 15-306 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16-548 herein.

Similar provisions as to attachment generally are found in section 16-516.

Changes are made in phraseology.

## § 16-550. Preservation of property—Sale.

The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-307 (Mar. 3, 1901, ch. 854, § 1093, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16-518 herein.

Changes are made in phraseology.

## § 16-551. Defending against the attachment—Trial of issues.

A garnishee or stranger to the action who may make claim to the property attached may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact thereby made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-308 (Mar. 3, 1901, ch. 854, § 1094, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16-520 herein.

Changes are made in phraseology.

## § 16-552. Interrogatories to garnishee—Oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules



or special order of the court, to be served upon any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers, verified by a written declaration that the answers are made under the penalties of perjury, to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(c) Whoever willfully makes and subscribes a return, statement, or other document, pursuant to this section, that contains, or is verified by, a written declaration that it is made under the penalties of perjury, and that he does not believe to be true and correct as to every material matter, is subject to the penalties prescribed for perjury. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-304 (Mar. 3, 1901, ch. 854, § 1089, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043).

Section is from part of section 15-304 of D.C. Code, 1961 ed. The remainder of the section is set out in section 16-545 herein.

Similar provisions as to attachment generally that were not amended to change the method of verification of answers, are found in section 16-521 herein.

Changes are made in phraseology.

#### § 16-553. Traverse of garnishee's answers—Trial of issue—Costs and attorney's fee.

If a garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's judgment, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-551. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 79 Stat. 554, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-309 (Mar. 3, 1901, ch. 854, § 1095, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16-522 herein.

Changes are made in phraseology.

#### § 16-554. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same. The court, without other pleadings, shall try the issues raised by the claim, with a jury if either party so requests, and may make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-310 (Mar. 3, 1901, ch. 854, § 1096, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16-523 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath," to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

#### § 16-555. Condemnation and sale of property—Proceeds of sale under interlocutory order.

Where the attachment has been levied upon specific property, on the return by the marshal, judgment of condemnation of the property may be entered, and as much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias. If the property was sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-311 (Mar. 3, 1901, ch. 854, § 1097, 31 Stat. 1361).

Similar provisions as to attachment generally are found in section 16-525 herein.

Changes are made in phraseology.

#### CROSS REFERENCE

Other provisions concerning effect and enforcement of decrees, see §§ 15-103 to 15-105, 15-301, and 16-541.

#### § 16-556. Judgment against garnishee.

(a) Subject to the provisions of subchapter III of this chapter, if a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961, ed., § 15-312 (Mar. 3, 1901, ch. 854, § 1098, 31 Stat. 1361; Aug. 4, 1959, Pub. L. 86-130, § 3, 73 Stat. 277).

Similar provisions as to attachment generally are found in section 16-526 herein.

Changes are made in phraseology.

### SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

#### § 16-571. Definition.

(a) As used in this subchapter, "wages" means:

(1) wages, salary, commissions, or other remuneration for services performed by an employee for his employer, including any such remuneration measured partly or wholly by percentages or share



of profits, or by other sums based upon work done or results produced, whether or not the employee is given a drawing account; and

(2) any drawing account made available to an employee by his employer.

(b) The term "wages" does not include any amount paid or payable to an employee who is not a resident of the District of Columbia as remuneration for services performed within the District of Columbia, if the period for which the employee is engaged by the employer to perform such services within the District of Columbia is less than 15 consecutive days' duration; and any such amount shall be subject to attachment without regard to this subchapter. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 276).

Section is derived from subsec. (c) of section 15-317 of D.C. Code, 1961 ed., which was subsec. (f) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology, and changes are made in arrangement.

#### § 16-572. Attachment of wages—Percentage limitations—Priority of attachments.

Notwithstanding any other provision of subchapter II of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

(1) 10 per centum of so much of the gross wages as does not exceed \$200 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(2) 20 per centum of so much of the gross wages as exceeds \$200 but does not exceed \$500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(3) 50 per centum of so much of the gross wages as exceeds \$500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month.

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16-507. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-314 (Mar. 3, 1901, ch. 854, § 1104A(a)), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 275).

Minor changes are made in phraseology.

#### CROSS REFERENCE

Other provisions regarding attachments and priorities, see § 16-507.

#### § 16-573. Employer's duty to withhold and make payments—Percentage.

(a) Except as provided in subsection (b) of this section, an employer upon whom an attachment is served, and who:

(1) at the time is indebted for wages to an employee who is the judgment debtor named in the attachment; or

(2) becomes so indebted to the judgment debtor in the future—

shall, while the attachment remains a lien upon such indebtedness, withhold and pay to the judgment creditor, or his legal representative, within 15 days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until the attachment is wholly satisfied.

(b) Upon written notice of any court proceeding attacking the attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings.

(c) Any payments made by an employer-garnishee in conformity with this section shall be a discharge of the liability of the employer to the judgment debtor to the extent of the payment.

(d) Under this section the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$200, nor more than 20 per centum of the gross wages in excess of \$200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$500. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-315 (Mar. 3, 1901, ch. 854, § 1104A(b)), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 275).

Changes are made in phraseology and arrangement.

#### § 16-574. Judgment creditor to file receipts, in court, of amount collected.

(a) The judgment creditor shall:

(1) file with the clerk of the court, every three months after the serving of an attachment upon an employer-garnishee, a receipt showing the amount received and the balance due under the attachment as of the date of filing;

(2) file a final receipt with the court and furnish a copy thereof to the employee-garnishee; and

(3) obtain a vacation of the attachment within 20 days after the attachment has been satisfied.

(b) If the judgment creditor fails to file any of the receipts prescribed by subsection (a) of this section, an interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee suffered by, and tax costs in favor of, the party filing the motion to compel the accounting. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-316 (Mar. 3, 1901, ch. 854, § 1104A(c), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 276).

Changes are made in phraseology and arrangement.

#### § 16-575. Judgment against employer-garnishee for failure to pay percentages.

If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 276).

Section is derived from subsec. (a) of section 15-317 of D.C. Code, 1961 ed., which was subsec. (d) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

#### § 16-576. Lapse of attachment upon resignation or dismissal of employee.

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made thereon unless the judgment debtor is reinstated or reemployed within 90 days after the resignation or dismissal. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 276).

Section is derived from subsec. (b) of section 15-317 of D.C. Code, 1961 ed., which was subsection (e) of section 1 of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

#### § 16-577. Applicability of per centum limitations to judgments for support.

The per centum limitations prescribed by section 16-572 do not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's wife, or

former wife, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-318 (Mar. 3, 1901, ch. 854, § 1104A(g), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 276).

Minor changes are made in phraseology.

#### § 16-578. Court of General Sessions judgments—Lapse—Validity.

An attachment issued by the District of Columbia Court of General Sessions upon a judgment of that court duly docketed in the United States District Court for the District of Columbia, and levied within six years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15-132(a). (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 15-319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 277; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section is derived from subsec. (a) of section 15-319 of D.C. Code, 1961 ed., which was subsec. (h) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

#### CROSS REFERENCES

Method of making levies, avoidance of attachment, etc., see §§ 16-511 to 16-513.

Quashing of attachments, see § 16-506.

#### § 16-579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered.

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that the salary or compensation is merely colorable and designed to defraud or impede the creditors of the debtor, the court may direct the employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by the judgment debtor under his employment or upon the debtor's then earning ability. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 277).

Section is derived from subsec. (b) of section 15-319 of D.C. Code, 1951 ed., which was subsec. (i) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

### § 16-580. Quashing attachment where judgment obtained to hinder just claims.

Where an attachment levied under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of an interested person, may quash the attachment upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 15-319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86-130, § 1, 73 Stat. 277).

Section is derived from subsec. (c) of section 15-319 of D.C. Code, 1951 ed., which was subsec. (j) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15-319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

### § 16-581. Rules of procedure.

The judges of the District of Columbia Court of General Sessions and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 15-320 (Aug. 4, 1959, Pub. L. 86-130, § 8, 73 Stat. 278; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The reference "this subchapter" is substituted for "this Act".

### § 16-582. Attachments to which this subchapter is applicable.

This subchapter applies only with respect to attachments upon wages, as defined by section 16-571, issued on or after 60 days from August 4, 1959. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on act Aug. 4, 1959, Pub. L. 86-130, § 6, 73 Stat. 278.

Section was classified as a note under section 15-314 of D.C. Code, 1961 ed.

Changes are made in phraseology.

## Chapter 7.—CRIMINAL PROCEEDINGS IN THE COURT OF GENERAL SESSIONS

## Sec.

16-701. Rules and regulations.

16-702. Information, prosecution by.

16-703. Process of criminal division—Fees.

## Sec.

16-704. Bail—Collateral security.

16-705. Jury trial—Trial by court.

16-706. Enforcement of judgments—Commitment upon non-payment of fine.

16-707. Disposition of fines.

16-708. Penalties for wrongful conversion of forfeitures and fines.

16-709. Executions on forfeited recognizances and judgments.

16-710. Suspension of imposition or execution of sentence.

### § 16-701. Rules and regulations.

The District of the Columbia Court of General Sessions may make rules and regulations deemed necessary and proper for conducting business in the criminal division of the court. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the last part of the first sentence of section 11-748a of D.C. Code, 1961 ed.

Section 11-755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the Municipal Court, to form a new Municipal Court, subsec. (a) thereof provided, among other things, that the court thus formed, and the judges thereof, should have and exercise the same powers and jurisdiction theretofore had and exercised by the Police Court and the judges thereof.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Reference to "criminal division" of the court is inserted because, since the above-mentioned merger, the Municipal Court (now the Court of General Sessions) has exercised its civil jurisdiction and powers through a civil division, and its criminal jurisdiction and powers through a criminal division. The above-cited section 11-755 (subsec. (a)) of D.C. Code, 1961 ed., provided that the court should consist of a civil branch and a criminal branch (among others). See, also, rule 1 of the Rules Regulating Practice Before the "Criminal Division" of the Court.

Minor changes are made in phraseology.

The power of the Court of General Sessions to prescribe rules governing practice and procedure, generally, in the court, are set out in section 13-101 herein. For remainder of sections 11-748a and 11-755 of D.C. Code, 1961 ed., see tables.

### § 16-702. Information, prosecution by.

Prosecutions in the criminal division of the District of Columbia Court of General Sessions shall be by information by the proper prosecuting officer. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-715a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 44, 31 Stat. 1196; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).



Section is derived from the first sentence of section 11-715a of D.C. Code, 1961 ed.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "municipal court" for the same reasons stated in revision note under section 16-701 herein.

A minor change in phraseology.

For remainder of sections 11-715a and 11-755 of D.C. Code, 1961 ed., see tables.

#### CROSS REFERENCES

Jury trials in vagrancy proceedings, see § 22-3301.

Procedure, see § 13-101.

### § 16-703. Process of criminal division—Fees.

(a) The criminal division of the District of Columbia Court of General Sessions may issue process for the arrest of persons against whom an information is filed or complaint under oath is made.

(b) Process shall:

- (1) be under the seal of the court;
- (2) bear teste in the name of a judge of the court; and
- (3) be signed by the clerk.

(c) In cases arising out of violations of any of the ordinances or laws of the District, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases.

(d) In criminal cases cognizable in the United States District Court for the District of Columbia the process issued by the Court of General Sessions shall be directed to the United States marshal, except in cases of emergency, when it may be directed to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15-709(b)(2). (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748a, 11-748b, 11-748c, 11-748d, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; R.S.D.C. §§ 1065-1067; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, § 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates first clause of section 11-748a of D.C. Code, 1961 ed., and sections 11-748b to 11-748d thereof.

Section 11-755 of the Code is cited above as one of the sources of this section for the reasons stated in revision note under section 16-701 herein.

Section 11-751a of the Code is cited as one of the sources of the section because section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Subsec. (a) of this section is based on the first clause of section 11-748a of D.C. Code, 1961 ed., which empowered the Municipal Court (now Court of General Sessions) to issue the process described. The reference "criminal division of the Court of General Sessions" is substituted for the reference to the municipal court, in view of the enactment, in 1942, of section 11-755 (a) of D.C. Code, 1961 ed., and the 1962 amendment of that section. See revision note under section 16-701 herein. The additional provision in the first clause of section 11-748a that the court should have power to compel the attendance of witnesses is omitted as having been super-

seded by a provision in section 11-756(c) of D.C. Code, 1961 ed., that is carried into another section of this revised Part (see tables).

Sections 748b to 748d of D.C. Code, 1961 ed., which are carried into subsecs. (c), (d), and (b), respectively, of this section, were made applicable to the criminal division of the Municipal Court (now Court of General Sessions) pursuant to section 11-755(b) of D.C. Code, 1961 ed., which provided that service of process in the criminal division of the Municipal Court should be had as provided under existing law for the Police Court of the District of Columbia.

References to the major and superintendent of police are changed to Chief of Police pursuant to Reorganization Order No. 46, set out in Appendix to Title 1 of D.C. Code, 1961 ed.

Under section 4-138 of D.C. Code, 1961 ed., a warrant for search or arrest may be executed in any part of the District by any member of the police force.

Rule 13 of the Rules Regulating Practice Before the Criminal Division of the court provides: "The Federal Rules of Criminal Procedure shall apply to all proceedings in the criminal division of this court in which the judges are acting as committing magistrates." Therefore, in addition to this section, process of the Court of General Sessions in criminal cases cognizable in the United States District Court is governed by the Federal Rules of Criminal Procedure and by 18 U.S.C. § 3041.

Subsec. (e) of this section is new, but states no new law, being in the nature of a cross reference. It is inserted for the purpose of completeness.

Changes are made in phraseology.

For remainder of sections 11-748a and 11-755 of D.C. Code, 1961 ed., see tables.

### § 16-704. Bail—Collateral security.

(a) A person charged with an offense triable in the criminal division of the Court of General Sessions may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).



Section is derived from the first and second sentences of the second paragraph of section 11-748a of D.C. Code, 1961 ed., and part of the proviso at the end thereof.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "municipal court", for the same reasons given in revision note under section 16-701 herein.

Changes are made in phraseology.

For remainder of sections 11-748a and 11-755 of D.C. Code, 1961 ed., see tables.

For rules governing the execution of bonds in the criminal division of the Court of General Sessions, see rule 5 of the court's rules regulating practice and procedure in that division.

#### § 16-705. Jury trial—Trial by court.

(a) In a criminal prosecution within the jurisdiction of the Court of General Sessions in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused in open court expressly waives trial by jury and requests to be tried by the judge. In the latter case, the trial shall be by the judge, and the judgment and sentence shall have the same force and effect in all respects as if they had been entered and pronounced upon the verdict of a jury.

(b) In any case where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless it is a case wherein the fine or penalty may be more than \$300, or imprisonment as punishment for the offense may be more than ninety days and the accused demands a trial by jury. In the latter case the trial shall be by jury.

(c) The jury for service in the criminal division of the court shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-715a, 11-716a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 45, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the second sentence of the first paragraph, and the first sentence of the second paragraph, of section 11-715a of D.C. Code, 1961 ed., with the first clause of the first sentence of section 11-716a thereof.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are also cited as sources of this section; and in subsec. (a), "Court of General Sessions" is substituted for "said court" (which, as used in section 11-715a of D.C. Code, 1961 ed., referred to the municipal court), and in subsec. (c), "criminal division of the court" is substituted for "said court" (which, as used in section 11-716a of D.C. Code, 1961 ed., also referred to the municipal court), for the same reasons stated in revision note under section 16-701 herein.

In subsec. (c) of this section, which, as indicated above, is from section 11-716a of D.C. Code, 1961 ed., words "unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve" are inserted to conform with present practice in the criminal division of the Municipal Court as expressed in the criminal rules of the court.

Section II(a) of rule 14 of such rules provides in part that at any time before a verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number of persons less than 12. For other provisions relating to jury trials, including those relating to automatic waiver of the right to demand a jury, see other provisions of that rule.

Changes are made in phraseology.

For remainder of sections 11-715a, 11-716a, and 11-755 of D.C. Code, 1961 ed., see tables.

#### § 16-706. Enforcement of judgments—Commitment upon nonpayment of fine.

The Court of General Sessions may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, in any case where the criminal division of the court imposes a fine, the court may, in default of the payment of the fine imposed, commit the defendant for such a term as the court deems right and proper, not to exceed one year. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-715a, 11-748a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 48, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, § 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 25, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of the first sentence and all of the second sentence of the first paragraph of section 11-748a of D.C. Code, 1961 ed., with the second sentence of the second paragraph of section 11-715a thereof. The second sentence of the first paragraph of section 11-748a, and the second sentence of the second paragraph of section 11-715a thereof, were identical.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are also cited as sources of this section; the words "Court of General Sessions may enforce any of its judgments rendered in criminal cases" are substituted for "to enforce any of its judgments"; and the words "criminal division of the court" are substituted for "said court" (which referred to the municipal court), for the reasons stated in revision note under section 16-701 herein.

The exception phrase is inserted at the beginning of the second sentence, to avoid conflict between that sentence and other laws. For example, see section 22-109 of D.C. Code, 1961 ed., as amended in 1953, wherein the maximum term of imprisonment upon failure to pay a fine imposed upon conviction of certain specified offenses is six months for each such offense.

Changes are made in phraseology.

For remainder of sections 11-715a, 11-748a, and 11-755 of D.C. Code, 1961 ed., see tables.

#### § 16-707. Disposition of fines.

(a) All fines payable and paid under judgment of the criminal division of the Court of General Sessions shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from that part of the third sentence of the second paragraph of section 11-748a of D.C. Code, 1961 ed., that preceded the first semicolon in the paragraph, and the proviso at the end of the paragraph. Insofar as the paragraph also related to forfeitures, it is carried into section 16-704 herein.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "said municipal court", for the same reasons stated in revision note under section 16-701 herein.

Changes are made in phraseology.

For remainder of sections 11-748a and 11-755 of D.C. Code, 1961 ed., see tables.

### § 16-708. Penalties for wrongful conversion of forfeitures and fines.

Whoever, being an agent as contemplated and defined by section 16-704(a), or by section 16-707(a), wrongfully converts to his own use any money received by him as provided therein, is guilty of embezzlement, and shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-748a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 29, 1953, ch. 159, § 410, 67 Stat. 108).

Section is derived from a clause in the third sentence of the second paragraph of section 11-748a of D.C. Code, 1961 ed. For remainder of such section 11-748a, see tables.

As herein set out, the provisions relate to wrongful conversion of forfeitures and fines collected or paid in the criminal division of the Court of General Sessions, formerly designated the municipal court. See revision note under section 16-701 herein.

Words "and upon conviction thereof", which followed "embezzlement," are omitted as surplusage.

Changes are made in phraseology.

### § 16-709. Executions on forfeited recognizances and judgments.

The Court of General Sessions may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-724a, 11-751a, 11-755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 57, 31 Stat. 1199; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11-724a of D.C. Code, 1961 ed.

Sections 11-751a and 11-755 of D.C. Code, 1961 ed., are cited as sources of this section; "Court of General Sessions" is substituted for "said court" (which referred to

the municipal court); words "recognizances forfeited in its criminal division" are substituted for "forfeited recognizances"; and the reference "the criminal division" is substituted for "said court" where the latter term appeared for the second time in section 11-724a, for the reasons stated in revision note under section 16-701 herein.

Changes are made in phraseology.

For remainder of section 11-755 of D.C. Code, 1961 ed., see tables.

### § 16-710. Suspension of imposition or execution of sentence.

In criminal cases in the District of Columbia Court of General Sessions, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, for such time and upon such terms as it deems best, if it appears to be the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-757, 24-102 (June 25, 1910, ch. 433, § 2, 36 Stat. 864; June 18, 1953, ch. 128, § 1, 67 Stat. 65; June 20, 1958, Pub. L. 85-463, § 2, 72 Stat. 216; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates sections 11-757 and 24-102 of D.C. Code, 1961 ed.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions from which section 11-757 of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11-942a thereof because they referred, not only to the Municipal Court (now the Court of General Sessions), but also to the Juvenile Court. In this section, the provisions that related to the Juvenile Court are omitted, as they are set out in section 16-2383 herein.

Section 11-757 of D.C. Code, 1961 ed., provided that in each case of the imposition of sentence and the suspension of the execution thereof, the Municipal Court (now, the Court of General Sessions) might, in its discretion, place the defendant on probation "as provided by section 24-102". Section 24-102, as enacted in 1910, conferred power upon both the Supreme Court of the District of Columbia (later redesignated the District Court) and the former police court (of which the Municipal Court was the successor) to place defendants on probation, and prescribed certain conditions and procedures to be followed. Insofar as the District Court was concerned, that section was repealed by act June 20, 1958, Pub. L. 85-463, § 2, 72 Stat. 216, since probation matters in the United States District Court for the District of Columbia are now covered by Title 18, United States Code, section 3651 et seq., in view of the amendment of section 3651 thereof by section 1 of the 1958 act. Section 2 of the 1958 act, in repealing section 24-102, D.C. Code, 1961 ed., insofar as it related to the District Court, contained a saving clause, as follows: "but nothing contained in this act shall be construed to amend or repeal the provisions of the act entitled 'An act to provide for the suspension of the imposition or execution of sentence in certain cases



in the Municipal Court for the District of Columbia and in the Juvenile Court of the District of Columbia", approved June 18, 1953 (67 Stat. 65)". However, section 24-102 of D.C. Code, 1961 ed., never related to the Juvenile Court, and, as amended by the 1958 act to strike out the reference to the District Court, it related solely to the Municipal Court (now, the Court of General Sessions). Therefore, it is consolidated with section 11-757 of D.C. Code, 1961 ed., to form this revised section. The 1953 act cited in the above-quoted provisions of the 1958 act was classified to section 11-757, and, insofar as it related to the Juvenile Court, to section 11-968 of D.C. Code, 1961 ed., which is carried into section 16-2383 herein. The 1953 act did not provide that the Juvenile Court, in placing defendants on probation, should do so "as provided by section 24-102".

Changes are made in phraseology.

#### CROSS REFERENCES

Probation and suspension of sentences in the United States District Court for the District of Columbia, see U.S. Code, Title 18, § 3651.

When probation may be granted, see § 16-710.

### Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

#### Sec.

- 16-901. Definition.
- 16-902. Residence requirements.
- 16-903. Decree annulling marriage.
- 16-904. Grounds for divorce, legal separation and annulment.
- 16-905. Revocation of decree of divorce from bed and board.
- 16-906. Causes for absolute divorce arising after decree for separation.
- 16-907. Legitimacy of issue of annulled marriage contracted while another in force.
- 16-908. Legitimacy of issue of annulled marriage with lunatic.
- 16-909. Legitimacy of issue of divorced marriage.
- 16-910. Dissolution of property rights—Jurisdiction of court.
- 16-911. Alimony pendente lite—Suit money—Enforcement—Custody of children.
- 16-912. Permanent alimony—Enforcement—Retention of dower.
- 16-913. Alimony when divorce is granted on husband's application.
- 16-914. Retention of jurisdiction as to alimony and custody of children.
- 16-915. Restoration of wife's maiden or other previous name.
- 16-916. Maintenance of wife and minor children—Enforcement.
- 16-917. Co-respondents as defendants—Service of process.
- 16-918. Assignment of counsel in uncontested cases—Compensation.
- 16-919. Proof required on default or admission of defendant.
- 16-920. Effective date of final decree—Contents.
- 16-921. Validity of marriage, action to determine.
- 16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.

#### § 16-901. Definition.

As used in this chapter, "court" means the Domestic Relations Branch of the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Section is new, but states no new law. It is inserted for the purpose of clarification. At the time of the enactment, in 1901, of the provisions carried into this chapter, the term "court", as used in the provisions, referred to the Supreme Court of the District of Columbia, the name of which was changed in 1936 to the "District Court of the United States for the District of Columbia", and in 1948 to the "United States District

Court for the District of Columbia". Jurisdiction of actions for divorce or annulment of marriage, legal separation from bed and board, and related matters, continued to be vested in that court until the enactment of the act Apr. 11, 1956, ch. 204, § 101 et seq., 70 Stat. 111-113 (D.C. Code, 1961 ed., § 758 et seq.). Since that time, it has been vested in the Domestic Relations Branch of the Municipal Court, the name of which was changed by act Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171, to the District of Columbia Court of General Sessions. See section 11-1141 herein.

#### § 16-902. Residence requirements.

A decree of nullity of marriage or divorce may not be rendered in favor of anyone who has not been a bona fide resident of the District of Columbia for at least one year next before the application therefor, and a divorce may not be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause that has occurred out of the District and prior to residence therein. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-401 (Mar. 3, 1901, ch. 854 § 971, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 2, 49 Stat. 539).

Minor changes are made in phraseology.

#### § 16-903. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds specified by sections 30-101 and 30-103 as invalidating a marriage. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-402 (Mar. 3, 1901, ch. 854, § 965, 31 Stat. 1345).

A minor change was made in phraseology.

#### CROSS REFERENCES

Alimony pendente lite, see § 16-911.

Legitimacy of issue, see §§ 16-907 to 16-910.

Marriage may be decreed void, grounds, see § 30-102.

#### § 16-904. Grounds for divorce, legal separation and annulment.

(a) A divorce from the bond of marriage or a legal separation from bed and board may be granted for:

- (1) adultery;
- (2) desertion for two years;
- (3) voluntary separation from bed and board for five consecutive years without cohabitation; or
- (4) final conviction of a felony involving moral turpitude and sentence for not less than two years to a penal institution that is served in whole or part.

A legal separation from bed and board may also be granted for cruelty; and where a final decree of divorce from bed and board is or has been granted and the separation of the parties continues or has continued for two years after date of decree, the decree may be enlarged into a decree of absolute divorce from the bond of marriage upon application of the innocent spouse.

(b) Marriage contracts may be declared void where:

- (1) the marriage was contracted while either of the parties thereto had a former wife or hus-

band living, unless the former marriage had been lawfully dissolved;

(2) the marriage was contracted during the lunacy of either party, unless there has been voluntary cohabitation after the lunacy, or was procured by fraud or coercion;

(3) either party was matrimonially incapacitated at the time of marriage and the incapacity has continued; or

(4) either party had not arrived at the age of legal consent to the contract of marriage, unless there has been voluntary cohabitation after coming to legal age, but only on the action of the party not capable of consenting.

(Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-403 (Mar. 3, 1901, ch. 854, § 966, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 1, 49 Stat. 539).

Changes are made in phraseology or arrangement.

#### CROSS REFERENCE

Co-respondents must be made parties defendant and served with process as other defendants, see § 16-917.

#### § 16-905. Revocation of decree of divorce from bed and board.

The court may revoke its decree of divorce from bed and board at any time, upon the joint application of the parties to be discharged from the operation of the decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-404 (Mar. 3, 1901, ch. 854, § 969, 31 Stat. 1345).

Changes are made in phraseology.

#### § 16-906. Causes for absolute divorce arising after decree for separation.

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to the second decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-405 (Mar. 3, 1901, ch. 854, § 970, 31 Stat. 1345).

A minor change is made in phraseology.

#### § 16-907. Legitimacy of issue of annulled marriage contracted while another in force.

If any marriage is declared by decree to be void because either party has a former wife or husband living, and it appears that the marriage was contracted in good faith by the other party and in ignorance of the obstacle to the marriage, the court shall so find and declare in its decree, and the issue of the marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-406 (Mar. 3, 1901, ch. 854, § 972, 31 Stat. 1346).

Changes are made in phraseology.

#### § 16-908. Legitimacy of issue of annulled marriage with lunatic.

If a marriage is declared null and void because of the idiocy or lunacy of either party at the time of

the marriage the issue of the marriage shall be deemed legitimate. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-407 (Mar. 3, 1901, ch. 854, § 973, 31 Stat. 1346).

Minor changes are made in phraseology.

#### § 16-909. Legitimacy of issue of divorced marriage.

A divorce for a cause provided for by this chapter does not affect the legitimacy of the issue of the marriage dissolved by the divorce, but the legitimacy of the issue, if questioned, shall be tried and determined according to the course of the common law. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-408 (Mar. 3, 1901, ch. 854, § 974, 31 Stat. 1346).

Changes are made in phraseology.

#### § 16-910. Dissolution of property rights—Jurisdiction of court.

Upon the entry of a final decree of annulment or absolute divorce, in the absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and, in the same proceeding in which the decree is entered, the court may award the property to the one lawfully entitled thereto or apportion it in such manner as seems equitable, just, and reasonable. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-409 (Mar. 3, 1901, ch. 854, § 974a, as added Aug. 7, 1935, ch. 453, § 3, 49 Stat. 540).

Changes are made in phraseology.

#### CROSS REFERENCE

Joint deposits, accounts, or safety deposit boxes, see § 26-201 et seq.

#### § 16-911. Alimony pendente lite—Suit money—Enforcement—Custody of children.

During the pendency of an action for divorce, or an action by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court may:

(1) require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she is the plaintiff or the defendant, and enforce any order relating thereto by attachment and imprisonment for disobedience;

(2) enjoin any disposition of the husband's property to avoid the collection of the allowances so required;

(3) if the husband fails or refuses to pay the alimony or suit money, sequester his property and apply the income thereof to such objects; and

(4) determine who shall have the care and custody of infant children pending the proceedings. (Dec. 23, 1963, 77 Stat. 56, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-410 (Mar. 3, 1901, ch. 854, § 975, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Changes are made in phraseology.



## CROSS REFERENCES

As to use of habeas corpus in connection with custody of children, see § 16-1908.

Orders for support of feeble-minded person enforceable as decrees for temporary alimony, see § 32-616.

### § 16-912. Permanent alimony—Enforcement—Retention of dower.

When a divorce is granted to the wife, the court may decree her permanent alimony sufficient for her support and that of any minor children whom the court assigns to her care, and secure and enforce the payment of the alimony in the manner prescribed by section 16-911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-411 (Mar. 3, 1901, ch. 854, § 976, 31 Stat. 1346).

The provision for retention of the husband's right of dower in the wife's estate, in similar circumstances, is added, to conform with section 18-201a of D.C. Code, 1961 ed., which, as amended by act Sept. 14, 1961, Pub. L. 87-246, § 3, 75 Stat. 515 (Supp. II, 1963), not only restored the wife's right of dower (which had been abolished by act Aug 31, 1957, Pub. L. 85-244, § 3, 71 Stat. 560), but established a statutory right of dower in the husband as well, in the estate of his wife, and provided that all other laws in force in the District of Columbia relating to the right of dower and its incident should, on and after the effective date of such act (Mar. 15, 1962), be construed to be applicable to both husband and wife. The 1961 act also amended sections 18-101, 18-204, 18-211 and 30-201 of D.C. Code, 1961 ed. See, also, section 16-2921 et seq. of this revised Part.

Changes are made in phraseology.

### § 16-913. Alimony when divorce is granted on husband's application.

When a divorce is granted on the application of the husband, the court may require him to pay alimony to the wife, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-412 (Mar. 3, 1901, ch. 854, § 977, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

### § 16-914. Retention of jurisdiction as to alimony and custody of children.

After the issuance of a decree of divorce granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders relating to those matters. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-413 (Mar. 3, 1901, ch. 854, § 978, 31 Stat. 1346).

Minor changes are made in phraseology.

### § 16-915. Restoration of wife's maiden or other previous name.

In granting a divorce from the bond of marriage, the court may restore to the wife her maiden or other previous name. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-414 (Mar. 3, 1901, ch. 854, § 979, 31 Stat. 1346).

The only change is the insertion of a comma after "marriage".

### § 16-916. Maintenance of wife and minor children—Enforcement.

When a husband fails or refuses to maintain his wife and minor children, if any, although able so to do, the court, on application of the wife, pendente lite and permanently, may decree that he shall pay her, periodically, such sums as would be allowed to her as pendente lite or permanent alimony in case of divorce for the maintenance of herself and the minor children, if any, committed to her care by the court. The court may enforce the payment thereof in the same manner as directed in regard to the payment of permanent alimony. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-415 (Mar. 3, 1901, ch. 854, § 980, 31 Stat. 1346; June 20, 1949, ch. 228, 63 Stat. 213).

Minor changes are made in phraseology.

### § 16-917. Co-respondents as defendants—Service of process.

In a divorce case where adultery is charged, the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-417 (Mar. 3, 1901, ch. 854, § 983, 31 Stat. 1347).

### § 16-918. Assignment of counsel in uncontested cases—Compensation.

In all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause. The attorney shall receive such compensation for his services as the court determines to be proper, which shall be paid by the parties as the court directs. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-418 (Mar. 3, 1901, ch. 854, § 982, 31 Stat. 1374; June 20, 1949, ch. 229, 63 Stat. 213).

Changes are made in phraseology.

### § 16-919. Proof required on default or admission of defendant.

A decree for a divorce, or a decree annulling a marriage, may not be rendered on default, without proof; and an admission contained in the answer of the defendant may not be taken as proof of the facts charged as the ground of the application, but shall be proved by other evidence in all cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-419 (Mar. 3, 1901, ch. 854, § 964, 31 Stat. 1345).

Changes are made in phraseology.

**§ 16-920. Effective date of final decree—Contents.**

A final decree annulling or dissolving a marriage is not effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal, and until the final disposition of any appeal taken, and every final decree shall expressly so recite. Every decree for absolute divorce shall contain the date thereof and may not be absolute and take effect until the expiration of six months after its date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-421 (Apr. 19, 1920, ch. 153, § 983a, 41 Stat. 567; Aug. 7, 1935, ch. 453, § 4, 49 Stat. 540).

Changes are made in phraseology.

**§ 16-921. Validity of marriage, action to determine.**

When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-422 (Mar. 3, 1901, ch. 854, § 981, 31 Stat. 1346).

Changes are made in phraseology.

**§ 16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.**

This chapter does not invalidate any marriage solemnized according to law before January 1, 1902, or any decree or judgment of divorce pronounced before that date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-420 (Mar. 3, 1901, ch. 854, § 967, 31 Stat. 1345).

Changes are made in phraseology.

**Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS****SUBCHAPTER I.—EJECTMENT**

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**SUBCHAPTER I.—EJECTMENT****§ 16-1101. Parties defendant—Joint tenants and tenants in common.**

(a) A civil action based upon a cause of action in ejectment, may be brought against:

- (1) the person actually occupying the premises claimed, either in person or by tenant; or
- (2) both the claimant and his tenant, or other occupant claiming under him; or
- (3) if the premises are not actually occupied, a person exercising acts of ownership thereon adversely to the plaintiff.

When a lessee is made a defendant at the suit of a party claiming against the title of the lessee's landlord, the landlord may appear and be made a party defendant in the place of his lessee.

Any person claiming to be in possession may, on motion, be admitted to defend the action.

(b) Joint tenants shall sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any number of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 16-501, 16-510 (Mar. 3, 1901, ch. 854, §§ 984, 994, 31 Stat. 1347, 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

Section consolidates sections 16-501 and 16-510 of D.C. Code, 1961 ed.

At the beginning, words "A civil action, based upon a cause of action in ejectment," are substituted for "Every action of ejectment" to conform the terminology more closely with rule 2 of the Federal Rules of Civil Procedure, which provides, with respect to civil cases, that there shall be only one form of action, to be known as a "civil action". See, also, rule 2 of the civil rules of the Court of General Sessions.

The provision of section 16-501 of D.C. Code, 1961 ed., that the action "shall be brought in the name of the real claimant" is omitted as covered by the first clause of rule 17(a) of the Federal Rules of Civil Procedure, which provides that "Every action shall be prosecuted in the



name of the real party in interest". See, also, the first clause of rule 17(a) of the civil rules of the Court of General Sessions.

For procedural provisions relating to necessary, permissive, misjoinder, or nonjoinder of parties, and interpleader, see rules 19-22, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

#### § 16-1102. Failure of tenant to give notice to landlord.

If a tenant, on whom a complaint in ejectment is served, fails to give notice thereof, without delay, to his landlord or the agent of the landlord, he shall forfeit and pay to the landlord the value of three years' full rent of the premises, to be recovered by a civil action. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-502 (11 Geo. 2, ch. 19, § 12, 1738; Kilty Rep., p. 251; Alex. Br. Stat., p. 737; Comp. Stat. D.C., p. 332, § 61).

Section 16-502 of D.C. Code, 1961 ed., which, as indicated above, was based upon one of the British statutes in force in the District, provided, as follows:

"Every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt."

As set out in this revised section, the provisions are re-written to modernize the language, but without change of substance. Further, "complaint" is substituted for "declaration", and "civil action" is substituted for "action of debt" to conform the terms with rules 2 and 7(a), respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Municipal Court.

#### § 16-1103. Contents of complaint—Adverse possession.

In his complaint in ejectment, the plaintiff shall:

(1) describe the premises claimed with reasonable certainty; and

(2) set forth distinctly the nature and quantity of the estate claimed by him in the premises.

It is sufficient for the plaintiff to state, in addition, that:

(1) he was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession thereof, and withholds the possession of the premises from the plaintiff, or wrongfully detains possession; or

(2) the defendant is wrongfully exercising acts of ownership over the premises.

However, except as provided by this chapter, acts of ownership do not amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-503 (Mar. 3, 1901, ch. 854, § 985, 31 Stat. 1347).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

##### CROSS REFERENCE

Pleadings generally, see § 13-101.

#### § 16-1104. Proof necessary.

(a) Except as provided by subsection (b) of this section, in an action of ejectment it is sufficient to entitle the plaintiff to relief to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed, and that the defendant is:

(1) in possession of the premises, and is holding adversely to the plaintiff; or

(2) exercising acts of ownership over the premises, adversely to the plaintiff.

(b) In an action pursuant to this chapter by one or more joint tenants or tenants in common against their cotenants, the plaintiff shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-505 (Mar. 3, 1901, ch. 854, § 988, 31 Stat. 1347).

Changes are made in phraseology and arrangement.

#### § 16-1105. Legal title in mortgagee or trustee—Possession.

It is not a bar to the plaintiff's recovery in an action of ejectment that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt, unless the mortgagee or trustee, or those claiming under him, has taken possession of the premises, or unless the defendant claims under the mortgagor or grantor in the deed of trust. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-506 (Mar. 3, 1901, ch. 854, § 989, 31 Stat. 1347; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

#### § 16-1106. Performance of contract by vendee as precluding vendor from recovery.

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree for a conveyance of the legal title, without condition, the vendor may not recover the property from the vendee. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-507 (Mar. 3, 1901, ch. 854, § 990, 31 Stat. 1348).

Words "in equity", which followed "decree", are omitted; and words "the vendor may not recover" are substituted for "such vendor shall not be entitled at law, any more than in equity, to recover", in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

A minor change is made in phraseology.

#### § 16-1107. Several judgments against defendants occupying distinct parcels.

When it appears on the trial in an action of ejectment that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-508 (Mar. 3, 1901, ch. 854, § 992, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

A minor change is made in phraseology.

**§ 16-1108. Recovery of less than is claimed.**

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-509 (Mar. 3, 1901, ch. 854, § 993, 31 Stat. 1348).

**§ 16-1109. Recovery of mesne profits and damages—Separate count.**

(a) The plaintiff may embody in his complaint, in a separate count, a claim for the:

(1) mesne profits received by the defendant from the property sued for; or

(2) clear value of the use and occupation of the property sued for—

extending to the time of the verdict, and also damages for waste or injury to the premises during that period.

(b) If the jury find for the plaintiff, they may, at the same time, find and assess the mesne profits, or the value of the use and occupation and the amount of damages, specified by subsection (a) of this section. Except in the case provided for by section 16-1116, there shall be rendered, besides a judgment for the recovery of the property, a judgment against the defendant for the amount so found by the jury. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-511 (Mar. 3, 1901, ch. 854, § 995, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 16 of the civil rules of the Court of General Sessions.

**§ 16-1110. Recovery, by landlord, of furniture, arrears in rent, and damages—Separate counts.**

(a) In an action in ejectment against his tenant, a landlord may embody in his complaint, in separate counts, claims for:

(1) furniture, if leased with the realty;

(2) arrears of rent due at the termination of the tenancy;

(3) double rent in cases authorized by this Code from the termination of the tenancy to the verdict for possession; and

(4) damages for waste or injury to the premises or furniture during the defendant's occupancy of the premises and before commencement of the action.

(b) If the jury find for the landlord, they may, at the same time, find the amounts due for arrears of rent and for double rent and for damages, as provided by subsection (a) of this section, and judgment shall be rendered accordingly. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-512 (Mar. 3, 1901, ch. 854, § 996, 31 Stat. 1348).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 18 of the civil rules of the Court of General Sessions.

**§ 16-1111. Separate action for rent or damages.**

The plaintiff in ejectment is not required to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so does not prevent him from bringing his action for rent or damages separately. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-513 (Mar. 3, 1901, ch. 854, § 997, 31 Stat. 1348).

Changes are made in phraseology.

**§ 16-1112. Expiration of title pending suit—Damages.**

If the title of the plaintiff in ejectment expires after the commencement of his action but before the trial, and but for the expiration he would have been entitled to recover, the verdict shall find the facts, and the plaintiff may recover his damages sustained by the wrongful withholding of the possession. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-514 (Mar. 3, 1901, ch. 854, § 998, 31 Stat. 1349).

Changes are made in phraseology.

**§ 16-1113. Defense of adverse possession—Enclosure.**

In an action to recover vacant and unimproved lots of ground it is not necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been enclosed; but if it appears that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the property and were the only persons who had exercised control over the property for a period of fifteen years before the bringing of the action, the facts shall be the equivalent of possession by actual enclosure. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-515 (Mar. 3, 1901, ch. 854, § 999, 31 Stat. 1349).

Changes are made in phraseology.

## CROSS REFERENCE

Quietling title, see § 16-3301.

**§ 16-1114. Verdict—Judgment—Costs—Future actions.**

(a) In an action of ejectment, if the plaintiff's title is established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the complaint, as the case may be. If the plaintiff fails to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be. The verdict may be for the plaintiff as to part and for the defendant



as to other part thereof. Except as provided by this chapter, judgment shall be rendered according to the verdict.

(b) When it appears on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, the verdict of the jury shall be that the defendant is not guilty. Thereupon, judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but the judgment is not a bar to a future action by the plaintiff against the defendant for the recovery of the property. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16-516, 16-517 (Mar. 3, 1901, ch. 854, §§ 1000, 1001, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Section consolidates sections 16-516 and 16-517 of D.C. Code, 1961 ed.

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

#### § 16-1115. Conclusiveness of final judgment.

A final judgment rendered in an action of ejectment is conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-518 (Mar. 3, 1901, ch. 854, § 1002, 31 Stat. 1349).

Minor changes are made in phraseology.

#### § 16-1116. Improvements—Notice—Good faith—Directions to jury—Measure of damages.

In an action of ejectment, at any time before the trial, the defendant may give notice that if the verdict of the jury is in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on the property, which were begun in good faith before the commencement of the action. The court shall then direct the jury, in case they find in favor of the plaintiff's title and also find that the permanent improvements were made by the defendant, or those under whom he claims, under the circumstances described in this section, to assess the:

(1) damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of the improvements, during the whole period of the occupation of the property to the date of the verdict, and any damage done to the property, by waste or otherwise, by the parties during the occupation;

(2) present value of any permanent improvements that may have been placed on the premises by the defendant or those under whom he claims;

(3) present value of the property of the plaintiff without and exclusive of the improvements.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-519 (Mar. 3, 1901, ch. 854, § 1003, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Changes are made in phraseology.

#### § 16-1117. New trial as to assessment.

Either party who feels aggrieved by the assessment provided for by section 16-1116, may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the verdict aside and order another jury to be empaneled in the cause to make a new assessment. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-567, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-520 (Mar. 3, 1901, ch. 854, § 1004, 31 Stat. 1350; June 30, 1902, ch. 1329, 32 Stat. 538).

Minor changes are made in phraseology.

#### § 16-1118. Judgment for damages in excess of improvements.

When the damages of the plaintiff, assessed as provided by section 16-1116, exceed the value of the permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed by section 16-1109. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-521 (Mar. 3, 1901, ch. 854, § 1005, 31 Stat. 1350).

Minor changes are made in phraseology.

#### § 16-1119. Judgment when improvements and damages are equal.

When the value of the improvements, ascertained as provided by this chapter, equal but do not exceed the plaintiff's damages, as found by the jury, the plaintiff shall be entitled to judgment only for the recovery of the property sued for and costs. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-522 (Mar. 3, 1901, ch. 854, § 1006, 31 Stat. 1350).

Minor changes are made in phraseology.

#### § 16-1120. Election of plaintiff if value of improvements exceeds damages.

If the value of the improvements referred to in this chapter is found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of the excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for the property, with all the plaintiff's right, title, and interest therein. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-523 (Mar. 3, 1901, ch. 854, § 1007, 31 Stat. 1350).

Minor changes are made in phraseology.



**§ 16-1121. Judgment and writ of possession after payment for improvements.**

When the plaintiff pays to the defendant, within the time fixed therefor by the court, or, in case of the defendant's refusal to accept the payment, pays into court for the defendant's use the amount of the excess of the value of the improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-524 (Mar. 3, 1901, ch. 854, § 1008, 31 Stat. 1350).

Changes are made in phraseology.

**§ 16-1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.**

If the plaintiff tenders to the defendant a deed as provided by section 16-1120 and demands the value of his property without the improvements, as found by the jury, and the defendant fails or refuses to pay the value within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and if the plaintiff is a minor, the court may authorize the deed to be executed by his guardian. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-525 (Mar. 3, 1901, ch. 854, § 1009, 31 Stat. 1350).

Changes are made in phraseology.

**§ 16-1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.**

If the plaintiff fails or refuses either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or, as provided by the chapter, to tender a deed to the defendant and accept from him the value of the plaintiff's property, exclusive of the improvements, the defendant may pay the value into court for the use of the plaintiff. Thereupon, the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover the property for cause theretofore existing. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-526 (Mar. 3, 1901, ch. 854, § 1010, 31 Stat. 1350).

Changes are made in phraseology.

**§ 16-1124. Ejectment for non-payment of rent—Time limitation on relief from judgment—Set-off—Dismissal upon payment.**

(a) In a case between landlord and tenant, where one-half year's rent or more is in arrear and unpaid, and the landlord or lessor to whom the rent is due has the right by law, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of the rent due, to re-enter for non-payment of the rent, he may, without any formal demand or re-entry, commence a civil action in ejectment for the recovery of the demised premises.

(b) When a judgment is given for the plaintiff in an action pursuant to this section, and execution is had on the judgment, before the rent in arrear and costs of suit are paid, the lease of the property

shall cease and be determined, unless the judgment is reversed on appeal or certiorari or, within six months after execution on the judgment, the defendant or a person who has succeeded to his interest, or a mortgagee of the lease or of any party thereof who was not in possession when final judgment was rendered, applies to the court for an order granting equitable relief from the judgment, which is subsequently granted.

(c) When possession of the property recovered has been delivered to the plaintiff under execution issued upon a judgment in an action pursuant to this section, and, in connection with the application for equitable relief from the judgment, the defendant or other person referred to in subsection (b) of this section, has, prior to or at the time of his application, paid or tendered to the plaintiff or his legal representative or successor in interest, or paid into court for the use of the person entitled thereto, the amount of rent in arrear, as stated in the judgment and costs of suit and all damages sustained by the plaintiff, the order for restoration of possession of the property to the person who made the payment shall provide for setting off the sum that the plaintiff has made, or that he might, without fraud, deceit, or willful neglect, have made, of the property, during his possession, against the rent accruing after the judgment was rendered, and for reimbursement to the applicant of the balance, if any, of the sum paid into court by him, after making the set-off prescribed by this subsection.

(d) At any time before the trial of an action pursuant to this section, the defendant may pay or tender to the plaintiff, or pay into court, the amount of all the rent then in arrear, and costs of suit. Thereupon, the action shall be dismissed. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 16-532, 16-533, 16-534 (4 Geo. 2, ch. 28, §§ 2, 3, 4, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., pp. 705-707; Comp. Stat. D.C., pp. 326-328, §§ 46, 47, 48).

Section consolidates sections 16-532, 16-533, and 16-534 of D.C. Code, 1961 ed.

The three sections of D.C. Code, 1961 ed., cited above, were derived, as above indicated, from three sections of a British statute of the year 1731, and the text thereof is set out immediately below exactly as it appeared in D.C. Code, 1961 ed.

*Sec. 16-532 (4 Geo. 2, ch. 28, § 2)*

"In case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then, and in such case, the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, then in every such case such defendant or defendants shall have and recover his, her, and their full costs: provided always, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall



and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons entitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.”.

*Sec. 16-533 (4 Geo. 2, ch. 28, § 3)*

“In case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity, such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she, or they do or shall within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money, as the lessor, or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her, or their entering into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved in the said lease, then the said lessee, or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.”.

*Sec. 16-534 (4 Geo. 2, ch. 28, § 4)*

“If the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they, shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.”.

A study of these provisions reveals that not all of section 2 of the British statute was carried into section 16-532 of D.C. Code, 1961 ed., and, if the provisions are to be preserved, apparently they are meaningless unless enough of the missing part is restored to the text to indicate the basis of the action by the landlord or lessor. This missing part of section 2 of the British statute, which was the beginning thereof, and which was also contained in the above-cited section 46 of Comp. Stat. D.C., p. 326, provided:

“And whereas great inconveniences do frequently happen to lessors and landlords, in cases of re-entry for non-payment of rent, by reason of the many niceties that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expense, charge, and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises; and it often happens that after such a re-entry made, the lessee or his assignee, upon one or more bills filed in the court of equity, not only holds out the lessor or landlord, by an injunction, from recovering the possession, but likewise, pending the said suit, do run much more in arrear, without giving any security for

the rents due, when the said re-entry was made, or which shall and do afterwards incur: For remedy whereof:

“Be it enacted, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service, or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, it shall be made to appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; then, and in every such case, the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and [here commence the provisions set in section 16-532 of D.C. Code, 1961 ed.]”.

The above-quoted provisions, including those contained in the missing part of section 2 of the British statute, are, in modified and modernized form, statutory law in other jurisdictions. See New York Civil Practice Act, § 997 et seq., and Ill. Rev. Stat. 1955, ch. 80, § 4.

In this revised section, the provisions, including those contained in the missing part of section 2 of the British statute, are consolidated. The language is modernized, and surplusage is omitted. Also omitted, are all provisions which are obsolete, or which can have no present application because of the merger, by the Federal Rules of Civil Procedure and the procedural Rules of the Court of General Sessions, of procedure in law and equity, and because there are no separate courts of equity in the District. Both the District Court and the Court of General Sessions have equitable as well as legal jurisdiction, and presumably whatever equitable relief is granted the defendant lessee or other persons mentioned under subsecs. (b) and (c) of this revised section, would be by application to the same court that had rendered judgment in favor of the plaintiff. Subsec. (b) provides for such an application (for an order), and all references to restoration of the property to the lessee, or to an injunction to stay the plaintiff's proceedings, by a separate “court of equity”, are omitted.

Another provision of section 2 of the British statute, that was within the provisions carried into section 16-532 of D.C. Code, 1961 ed., but that was omitted from the latter section, followed the words (with respect to the defendant) “shall be barred and foreclosed from all relief or remedy in law or equity,” and read “other than by writ of error, for reversal of such judgment, in case the same shall be erroneous.”. In subsec. (b) of this revised section, “appeal or certiorari” is substituted for “writ of error” in conformity with present procedure.

The provision in section 16-532 of D.C. Code, 1961 ed., for awarding costs to the defendant if “verdict shall pass” for him, or if plaintiff is nonsuited, is omitted, as this is a matter that is subject to rules of court. See rules 41 and 54(d) of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions.

It is not intended that this section should confer upon the tenant or other person mentioned in subsec. (b), an absolute right, after execution on the plaintiff's judgment in ejectment, to have possession of the property restored to him if, within 6 months after the execution, he makes the payment or tender referred to in subsec. (c) and applies for an order granting relief from the judgment. Nor was this the purpose of the British statute. Prior to its enactment, where the ejectments after judgments in



common-law courts were merely because of nonpayment of rent, courts of equity had been restoring tenants to possession on payment of arrears and interest. To such an extent had this practice been carried, that, in the British statute, the power of Equity to relieve, if it so wished in such cases, was restricted to a period of 6 months after the landlord had recovered the premises in ejectment. This is the object of subsecs. (b) and (c) of this section.

## SUBCHAPTER II.—PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE

### § 16-1151. Petition by person entitled to claim—Form and contents.

(a) A person entitled to claim real property, after the death of another person who has a prior estate therein, may, not oftener than once a year, petition the court for an order directing the production of the tenant for life, as prescribed by this subchapter, by a person, named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead, or, if there is no such person, by the guardian, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

(b) A petition prescribed by subsection (a) of this section shall be verified by the affidavit of the petitioner, and shall contain an averment that the petitioner has cause to believe that the person, upon whose life the prior estate depends, is dead, and that his or her death is being concealed by the person named in the petition. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-527 (6 Ann. ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16-1152 and 16-1153 herein are based upon different parts of section 16-527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"Any person or persons who hath or shall have any claim or demand in or to any remainder, reversion or expectancy or in to any estate, after the death of any person within age, married woman, or any other person whatsoever, upon affidavit made in the court of chancery, by the person so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married woman, or other person is dead, and that his or her death is concealed by such guardian, trustee, husband, or any other person, shall and may once a year, if the person aggrieved shall think fit, move the chancellor to order, and they are hereby authorized and required to order such guardian, trustee, husband, or other person, concealing or suspected to conceal such person, at such time and place as the said court shall direct, on personal or other due service of such order, to produce and shew to such person and persons (not exceeding two) as shall in such order be named by the party or parties prosecuting such order, such minor, married woman, or other persons, aforesaid; and if such guardian, trustee, husband, or such other person, as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, that then the court of chancery is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said court of chancery, or otherwise, before commissioners to be appointed by the said court, at such time and place as the court shall direct, two of which commissioners shall be nominated by the party or parties prosecuting such

order, at his, her or their costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed, in either or any of the said cases, the said minor, married woman, or such other person so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title or interest in remainder or reversion, or otherwise after the death of such infant, married woman, or such other person so concealed, as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, so concealed were actually dead."

In this section and sections 16-1152 and 16-1153 herein, and in sections 16-1154 to 16-1158, inclusive, herein, which are from other provisions of the same British statute, the language is modernized and every effort is made to conform the provisions with present practice under rules of court, and to simplify the meanings and implications of the older provisions, even to the extent of inserting material technically not contained in those sections (but implied therein), but without change of substance. The revised provisions are patterned to some extent upon some of the provisions of New York Real Property Law, § 570 et seq., that apparently were derived from the same original source.

In this section, "petition" is substituted for "affidavit", but subsec. (b) provides that the petition shall be verified by affidavit of the petitioner. It would seem that this would be in conformity with present practice, and yet would meet the requirements of the older law. Rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions, provide, among other things that in ordinary civil actions (see rules 2, respectively, thereof) there shall be a "complaint". However, even under the Federal Rules of Civil Procedure, the term "petition" is used in connection with certain special proceedings. See, for example, rule 27 thereof, regarding the perpetuation of testimony. As the proceeding provided for herein is special in nature, resulting, not in a judgment, but in a court order, it is considered that "petition", rather than "complaint", is the proper term.

Words in this section, "by a person named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead", were not contained in section 11-527 of D.C. Code, 1961 ed., but they place no limitation on the proceeding which does not exist at present, and they are inserted for the purpose of clarification.

Throughout sections 16-1151 to 16-1158 herein, "court" is substituted for "court of chancery", as the latter is an obsolete term. Both the United States District Court for the District of Columbia, and the District of Columbia Court of General Sessions, have both law and equity jurisdiction, and law and equity procedure were merged by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

### § 16-1152. Order to produce life tenant—Service of order.

Upon the presentation of the petition and affidavit prescribed by section 16-1151, the court shall issue an order to the person named in the petition to produce and show to the persons named in the order by the petitioner not exceeding two in number, at such time and place as the court directs, the person upon whose life the prior estate depends. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on the D.C. Code, 1961 ed., § 16-527 (6 Ann. ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).



This section and sections 16-1151 and 16-1153 herein are based upon different parts of section 16-527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11-527, see revision note under section 16-1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein.

Section 16-527 of D.C. Code, 1961 ed., provided merely for "personal or other due services" of the order referred to. For the purpose of clarification, and to conform with applicable rules of court, this revised section provides that a certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. See rules 4 and 5, respectively, of the Federal Rules of Civil Procedure, and the same numbered rules of the civil rules of the Court of General Sessions.

**§ 16-1153. Failure to produce as ordered—Subsequent proceedings—Commissioners—Presumption of death—Right of possession.**

(a) If a person upon whom an order, as prescribed by section 16-1152, is served, refuses or neglects to produce the person upon whose life the prior estate depends in the manner provided by the order, the court shall order him to produce the person in court or before commissioners appointed by the court, at such time and place as the court directs. Two of the commissioners shall be nominated by the petitioner, and they shall serve at his expense. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. The commissioners appointed shall make and file with the court a return showing the results of their investigation and their conclusions.

(b) If the person upon whom the second order prescribed by subsection (a) of this section is served refuses or neglects to produce, in court, or before the commissioners, as the case may be, the person upon whose life the prior estate depends, it shall be presumed that the latter person is dead, and the court shall issue an order permitting the petitioner to take possession of the property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-527 (6 Ann. ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16-1151 and 16-1152 herein are based upon different parts of section 16-527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11-527, see revision note under section 16-1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein.

Section 16-527 of D.C. Code, 1961 ed., provided for service of the order referred to in section 16-1152 herein, but was silent with respect to service of the second order, that is, the order referred to in subsec. (a) of this section. Obviously, however, the second order would have to be served, and subsec. (a) of this section, in providing for such service, provides that a certified copy of it shall be served in the manner provided by rules of court. See revision note under section 16-1152.

Further, while section 16-527 of D.C. Code, 1961 ed., provided that if the life tenant was not produced, as required, it would be "lawful" for the petitioner to enter upon the property claimed, it did not provide for entry after order of court. It would seem that such an order would be a prerequisite to the entry, and, for the purpose of clarification, subsec. (b) of this revised section provides for it.

**§ 16-1154. Investigation outside the District—Report to court—Presumption of death—Right to possession.**

If before, or at the time of, the presentation of the commissioners' return provided for by section 16-1153, or, where commissioners are not appointed, at any time before a final order is made, the party upon whom the first or second order is served presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the District of Columbia, the petitioner, at his own expense, may send one or both of the persons named in the first order to view him. If the person concealing or suspected of concealing the person upon whose life the prior estate depends, or the fact of his death, refuses or neglects to produce him or to procure him to be produced to the personal view of the persons sent for that purpose, the persons sent to view him shall make a true return of the refusal or neglect to the court, and the return shall be filed in the court. Thereupon, it shall be presumed that the tenant for life is dead, and the court shall issue an order permitting the petitioner to take possession of the real property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-528 (6 Ann. ch. 18, § 2, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 7).

As indicated above, section 16-528 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16-528 provided, as follows:

"If it shall appear to the said court by affidavit, that such minor, married woman, or other persons, mentioned in section 16-527, for whose life such estate is holden, is, or lately was at some certain place beyond the seas in the said affidavit to be mentioned, it shall and may be lawful for the party or parties prosecuting such order, as aforesaid, at his, her, or their costs and charges, to send over one or both the said persons appointed by the said order, to view such minor, married woman, or other person, for whose life any such estate is holden; and in case such guardian, trustee, husband or other person concealing or suspected to conceal such persons, as aforesaid, shall refuse or neglect to produce or procure to be produced to such person or persons, a personal view of such infant, married woman, or other person, for whose life any such estate is holden, that then and in such case such person or persons are hereby required to make a true return of such refusal or neglect to the court of chancery, which return shall be filed, and thereupon such minor, married woman, or other person, for whose life any such estate is holden, shall be taken to be dead; and it shall be lawful for any person claiming any right, title or interest, in remainder, reversion or otherwise, after the death of such infant, married woman, or other person, for whose life any such estate is holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, for whose life any such estate is holden, were actually dead".

For explanation of the policy followed in restating the provisions carried into this section and sections 16-1151 to 16-1153 and 16-1155 to 16-1158 herein, all of which are from provisions of the same British statute, see revision note under section 16-1151 herein.

While the provisions, as set out in this section, are completely rewritten, they do not make any change in substance, although, to clarify the provisions, words "without the District of Columbia" are substituted for "beyond the seas".



**§ 16-1155. Restoration of property to life tenant.**

The possession of real property that has been awarded to a petitioner pursuant to this subchapter, upon the presumption of the death of the person upon whose life the prior estate depends, shall be restored, by an order of the court, to the person evicted, or to his heirs, or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such a petition are the same as those prescribed by this subchapter to be followed upon the petition of the person to whom possession is awarded. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**REVISION NOTES****SECTION 16-155—SECTION REVISED**

Based on D.C. Code, 1961 ed., § 16-529 (6 Ann. ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16-1156 herein are based upon different parts of section 16-529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"If it shall afterwards appear upon proof, in any action to be brought pursuant to sections 16-527, 16-528, that such infant, married woman, or other person, for whose life any such estate is holden, were alive at the time of such order made, then it shall be lawful for such infant, married woman, guardian or trustee, or other person having any estate or interest, determinable upon such life, to reenter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person, having any estate or interest determinable upon such life, their executors, administrators or assigns, to maintain an action against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person, having any estate or interest determinable upon such life, were ousted of the possession of such lands, tenements or hereditaments".

For explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16-1151 herein.

Section 16-529 of D.C. Code, 1961 ed., as indicated above, in providing for restoration of the property to the life tenant upon proof that the person presumed to be dead was still living, provided merely that it would be "lawful" for the person evicted to re-enter on the property. Presumably, however, an order of court would be a prerequisite to reentry, and the provisions, as herein revised, so provide.

The provisions, as herein set out, are completely rewritten, but they do not make any change in substance.

**§ 16-1156. Recovery of profits by person evicted.**

A person evicted, as prescribed by this subchapter, may, when the presumption upon which he is evicted is erroneous, maintain a civil action against the person who has occupied the property, or his executor or administrator, to recover the full profits of the property during the occupation, while the person, upon whose life the prior estate depends, is or was living. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-529 (6 Ann. ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16-1155 herein are based upon different parts of section 16-529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from

a British statute of 1707. For the complete text of section 16-529, see revision note under section 16-1155 herein, and for explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16-1151 herein.

The provisions, as set out herein, are completely rewritten, but they do not make any change in substance.

**§ 16-1157. Preservation of life tenants' rights if living at time of return.**

When a guardian, trustee, or other person holding an estate or interest determinable upon the life of another person, shows by affidavit or otherwise, to the satisfaction of the court, that:

(1) he has used his utmost efforts to procure the tenant for life to appear in the court or elsewhere, according to the order of the court;

(2) he can not procure or compel him so to appear; and

(3) the tenant for life is or was living at the time of the return made and filed, as prescribed by this subchapter—

he may continue in the possession of the estate, and receive the rents and profits for and during the infancy of the infant, or for and during the life of any other person on whose life the estate or interest depends. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-530 (6 Ann. ch. 18, § 4, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 9).

As indicated above, section 16-530 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16-530 provided, as follows:

"If any such guardian, trustee, husband or other person or persons, holding or having any estate or interest, determinable upon the life or lives of any other person or persons, shall by affidavit or otherwise, to the satisfaction of the said court of chancery, make appear, that he, she or they have used his, her, or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made; and that he, she or they can not procure or compel such infant, married woman, or other person or persons so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, is, are or were living at the time of such return made and filed, as aforesaid, then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend".

For explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16-1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

**§ 16-1158. Persons holding over after life estate—Damages.**

A guardian or trustee for an infant, or other person having an estate determinable upon life or lives, who, after the determination of the particular estate or interest, without the express consent of



the person or persons who is or are next and immediately entitled thereto, holds over and continues in possession of the real property, is a trespasser. Any person entitled to the real property upon or after the determination of the particular estate or interest, or his executor or administrator, may recover in damages against the person so holding over, or his executor or administrator, the full value of the profits received during the wrongful possession. (Dec. 23, 1963, 77 Stat. 571, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-531 (6 Ann. ch. 18, § 5, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 10).

As indicated above, section 16-531 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16-531 provided, as follows:

"Every person who, as guardian or trustee for any infant, and every husband seized in right of his wife only, and every other person having any estate determinable upon any life or lives, who after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next, and immediately entitled, upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any manors, messuages, lands, tenements or hereditaments, shall be and are hereby adjudged to be trespassers; and every person and persons, his, her and their executors and administrators, who are or shall be entitled to any such manors, messuages, lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons so holding over, as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession, as aforesaid".

For explanation of the policy followed in restating the provisions carried into sections 16-1151 to 16-1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16-1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

### Chapter 13.—EMINENT DOMAIN

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#### SUBCHAPTER I.—GENERAL PROVISIONS

##### § 16-1301. Jurisdiction of District Court.

The United States District Court for the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16-601, 16-615, 16-616, 16-619 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; Mar. 1, 1929, ch. 439, 45 Stat. 1437; Apr. 11, 1935, ch. 57, § 4, 5, 59 Stat. 153; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Sections 16-601, 16-615, and 16-616 of D.C. Code, 1961 ed., did not contain jurisdictional language, but section 16-601, which is carried into section 16-1311 herein, provided that the condemnation proceedings referred to therein should be brought in the District Court; section 16-615, which is carried into section 16-1336 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16-601 et seq.; and section 16-616, which is carried into section 16-1337 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16-619 et seq.

Only the jurisdictional provisions of section 16-619 of D.C. Code, 1961 ed., are carried into this section. The remainder of section 16-619 is carried into section 16-1351 and 16-1352 herein.

Changes are made in phraseology.

### § 16-1302. Assignment of judge for condemnation cases.

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such periods as he determines, one of the judges of the court to hear cases involving the condemnation of real property in the District of Columbia. In case of the disability of the judge so assigned, or for any other reason, the chief judge may assign any judge of the Court for service in condemnation cases. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-301 (Mar. 3, 1863, ch. 91, § 1, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 60, 31 Stat. 1199; Dec. 20, 1928, ch. 41, 45 Stat. 1056; June 19, 1930, ch. 537, 46 Stat. 785; June 25, 1936, ch. 804, 49 Stat. 1921; May 31, 1938, ch. 290, § 5, 52 Stat. 584; June 25, 1948, ch. 646, §§ 24, 32(b), 62 Stat. 990, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The provision that only when the judge assigned to condemnation cases is "not engaged in such cases" shall he be subject to assignment to the other business of the court is omitted. It is the practice to assign one of the civil nonjury judges to hear condemnation proceedings, and the judge so assigned gives priority to condemnation proceedings over other cases. Ordinarily, however, condemnation proceedings are not sufficient to take the entire time of a judge, and to require him to do no other work while assigned to condemnation proceedings is wasteful and inefficient. This is a matter of internal administration and should not be governed by statute.

Changes are made in phraseology.

#### CROSS REFERENCE

Appointment of judges, see U.S. Code, Title 28, § 88.

### SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

### § 16-1311. Condemnation proceedings by Board of Commissioners.

When real property in the District of Columbia is needed by the Board of Commissioners of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and it can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the United States District Court for the District of Columbia in the name of the Board for the condemnation of the property or right of way and the ascertainment of its value. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-601 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "petition" to conform with the Federal Rules of Civil Procedure. See, particularly, rules 7(a) and 71A(c) thereof.

Changes are made in phraseology.

#### CROSS REFERENCES

Assessor of the District as expert witness, see § 14-308.

Assignment of special judge in cases involving condemnation of land for the District of Columbia, see § 16-1302.

Condemnation for right-of-way of water line from Dalecarlia Reservoir to Arlington County Sanitary District in Virginia, see § 43-1532.

Condemnation for streets, alleys, or highways, see § 7-201 et seq.

Condemnation of insanitary buildings, see § 5-616 et seq.

Condemnation of land for children's tuberculosis sanatorium, see § 32-312.

Condemnation of land for municipal center, see § 9-201.

Condemnation of land for United States, see § 16-1351 et seq.

Condemnation of lands for parks and playgrounds, see § 1-1011.

Condemnation of lands for sites for refuse incinerators, see § 6-505.

Condemnation of materials to make or repair public roads, see § 7-332.

Condemnation proceeding in cases concerning alleys and minor streets, see § 7-301 et seq.

Condemnation proceedings to close useless streets and alleys under Street Adjustment Act, see § 7-401 et seq.

Condemnation proceedings to establish building lines on streets, see § 5-203.

Condemnation proceedings under Alley Dwelling Act, see § 5-103.

Condemnation to open, widen, or straighten alleys or minor streets, see § 7-313 et seq.

Condemning land in excess of needs, see §§ 16-1331 to 16-1338.

No damages may be paid upon condemnation of telegraph company property for the right to lay conduits, see § 43-1417.

Proceeding by certain railroads to acquire land for railroad facilities, see § 7-1221.

Proceedings to acquire land for viaducts and subways, see § 7-1215.

### § 16-1312. Jury—Special list—Qualifications—Procedure for drawing.

(a) For the purposes of this subchapter, the jury commission shall:

(1) prepare a special list of persons who have the qualifications of jurors, as prescribed by section 11-2301, and who, in addition, are owners of real property in the District;

(2) from time to time, as may be necessary, write the names contained in the special list on separate and similar pieces of paper, which shall be so folded or rolled that the names can not be seen, and place them in a special box to be provided for the purpose;

(3) thereupon, seal and lock the special box, and, after thoroughly shaking the box, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping.

The box may not be unsealed or opened except by the jury commission.

(b) From time to time, as ordered by the court, the jury commission shall publicly break the seal of the box provided for by subsection (a) of this section, and proceed to draw therefrom by lot, without previous examination, the names of such number of persons as the court directs, to serve in condemnation proceedings brought pursuant to section 16-1311, and certify the names so drawn to the clerk of the court. At the time of each drawing, there shall be in the box the names of not less than one hundred persons possessing the qualifications prescribed by subsection (a) of this section.

(c) Except as provided by this section, chapter 23 of Title 11, in so far as it may be applicable, governs the qualifications of jurors in cases under section 16-1311 and the duties and conduct of the jury commissioners under this section.



(d) A person who has so served within one year may not serve as a condemnation juror under this section. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-603 (Mar. 3, 1901, ch. 854, § 484a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b) 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

While the Federal Rules of Civil Procedure now govern procedure in condemnation cases in the United States District Court for the District of Columbia (see, particularly rule 71A thereof), it would seem that if local law (in the case of the District of Columbia, federal law applied in the District) requires a jury trial of issues, that requirement shall be followed. Therefore, this section providing for the qualifications of, and manner of drawing, jurors, in connection with condemnation of real property for the use of the District, is retained. See rules 71A (h), (k) and 81(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology and arrangement.

#### § 16-1313. Selection of jury—Oath of jurors.

In each action brought pursuant to this subchapter, the court shall appoint, from among the persons whose names are drawn pursuant to section 16-1312, a jury of five capable and disinterested persons, and shall administer to the persons so drawn an oath or affirmation that they:

- (1) are not interested in any manner in the real property to be condemned;
- (2) are not related to the parties interested in the property; and
- (3) without favor or partiality, and to the best of their judgment, will appraise the value of the respective interests of all persons concerned in the property.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-604 (Mar. 3, 1901, ch. 854, § 485, 31 Stat. 1265; Apr. 19, 1920, ch. 153, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437).

Words "The said court holding a District Court of the United States" are omitted as obsolete. They had reference, originally, to the Supreme Court of the District of Columbia, which court, under prior law, held certain "special terms", one of which was designated the "district court of the United States". The court was redesignated the "District Court of the United States for the District of Columbia" by act June 25, 1936, ch. 804, 49 Stat. 1921. The District of Columbia was made a judicial district upon the enactment, in 1948, of Title 28 of the United States Code, and the correct name of the court is now "United States District Court for the District of Columbia." In this revised section, only the term "the court" is used. This is sufficient, in view of the provisions of sections 16-1311 and 16-1312 herein, in which the full name of the court is used.

The provision "shall thereupon cite all the owners and other persons interested to appear in said court, at a time to be fixed by the court, to answer said petition;" is omitted as covered by rule 71A (c) (2), (d) of the Federal Rules of Civil Procedure; and the provision "and if it shall appear to the court that there are any owners or other persons interested who are under disability, the court shall give public notice of the time at which it will proceed with the matter of condemnation; and at such time, if it shall appear that there are any persons under disability who have appeared or who have not appeared, the court shall appoint a guardian ad litem for each such person," is omitted as covered by rule 71A of the Federal Rules of Civil Procedure. See, particularly subd. (g) thereof. See, also, rule 17(c) of such rules.

The remaining provisions of section 16-604 of D.C. Code, 1961 ed., relating to selection of the jury, and oath

of jurors, are retained for the same reason stated in revision note under section 16-1312 herein.

Changes are made in phraseology and arrangement.

#### § 16-1314. Declaration of taking—Contents—Deposit—Transfer of title—Determination—Interest.

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the members of the Board of Commissioners, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a—

- (1) statement of the authority under which and the public use for which the property is taken;
- (2) description of the property taken sufficient for the identification thereof;
- (3) statement of the estate or interest in the property taken for public use;
- (4) plan showing the property taken; and
- (5) statement of the sum of money estimated by the Commissioners to be just compensation for the property taken.

(b) Notwithstanding section 16-1319, upon the filing of the declaration of taking and the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the property shall be deemed to be condemned and taken for the use of the District, and the right to just compensation therefor shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647).

Section is based on part of section 16-605 of D.C. Code, 1961 ed. Remainder of section 16-605 is carried into sections 16-1315 and 16-1316 herein.

The term "plaintiffs" is substituted for "petitioners", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

#### § 16-1315. Distribution of money deposited on declaration of taking—Judgment for deficiency or overpayment—Execution.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1314, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon



the final award of compensation, the court shall enter judgment for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure. A writ of execution may be issued on the judgment within the same time, and it shall have the same effect as a lien, and shall be executed and returned in the same manner, as if issued on any other judgment. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647). Section is based on part of section 16-605 of D.C. Code, 1961 ed. Remainder of section 16-605 is carried into sections 16-1314 and 16-1316 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the detailed provisions relating thereto in section 16-605 of D.C. Code, 1961 ed. The latter were substantially similar to those in subdivision (j) of rule 71A, and the latter governs on that point.

Changes are made in phraseology.

#### § 16-1316. Time for surrender of possession under declaration of taking—Adjustment of charges.

Upon the filing of the declaration of taking provided for by section 16-1314, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiffs. The court may make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat.

Section is based on part of section 16-605 of D.C. Code, 1961 ed. Remainder of section 16-605 is carried into sections 16-1314 and 16-1315 herein.

Changes are made in phraseology.

#### § 16-1317. Objections to jurors—Appraisement.

The court, before accepting the jury in a condemnation proceeding pursuant to this subchapter, shall hear any objections that may be made to any member thereof, and may pass upon any objection, and may excuse any juror or cause any vacancy in the jury, when empaneled, to be filled. After the jury is organized and have viewed and examined the land and premises affected by the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property, where the appraisement shall be recorded. In making their decision, the jury shall take into consideration, when a part only is taken, the benefit to the remainder of the tract, and shall give their appraisement accordingly. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed. § 16-606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

#### § 16-1318. Objections or exceptions to appraisement—New jury.

(a) Objections or exceptions to an appraisement of the jury pursuant to section 16-1317 may be filed within twenty days after the return of the appraisement to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisement, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisement is vacated and set aside, the court shall order the jury commission to draw from the special box the names of as many persons as the court directs, and, from among the persons so drawn, shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed as in the case of the first jury. The appraisement of the new jury shall be final when confirmed by the court.

(b) When an appraisement is vacated in part, the residue thereof as to the property condemned is not affected thereby. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-607 (Mar. 3, 1901, ch. 854, § 487, 31 Stat. 1266; Apr. 19, 1920, ch. 153, 41 Stat. 566; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology and arrangement.

#### § 16-1319. Payment of award—Transfer of title.

If the appraisement of the jury pursuant to section 16-1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisement of the new jury is confirmed by the court, the Board of Commissioners shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 7-215, and thereupon the title to the property condemned shall vest in the District of Columbia. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-608 (Mar. 3, 1901, ch. 854, § 488, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

#### § 16-1320. Fixing time for return of verdict.

In every case involving the condemnation of real property under this subchapter, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or the report to the court the reasons why the verdict or appraisement can not be returned by the time fixed. The court has discretion to extend the time for the return of the verdict or appraisement. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241 § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-609 (Mar. 3, 1901, ch. 854, § 489, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.



**§ 16-1321. Abandonment of proceedings—Liability.**

In a condemnation proceeding pursuant to this subchapter, it is optional with the Board of Commissioners to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-610 (Mar. 3, 1901, ch. 854, § 490, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1439; July 11, 1947, ch. 228, 61 Stat. 312).

Changes are made in phraseology.

**SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT****§ 16-1331. Acquisition of property in excess of needs.**

In order to promote the orderly and proper development of the seat of government of the United States, the Board of Commissioners of the District of Columbia, and agencies of the United States authorized by law to acquire real property may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land, or rights in or on land or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-612 (Apr. 11, 1935, ch. 57, § 1, 49 Stat. 152).

Minor changes are made in phraseology.

**CROSS REFERENCES**

Sale of public lands, see § 9-301 et seq.

Use of certified mail, see § 14-506.

**§ 16-1332. Sale of excess property—Restrictions on use—Fair market value—Disposition of moneys.**

(a) The Board of Commissioners of the District of Columbia and agencies of the United States authorized by law to acquire real property may, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works—

with such reservations concerning the future use and occupation of the property as, in their discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisal of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States, and where the property sold was acquired under an appropriation authorized for the use of the District of Columbia, moneys received from the sale shall be deposited in the Treasury to the credit of the revenues of the District of Columbia. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16-613 of D.C. Code, 1961 ed. Remainder of section 16-613 is carried into sections 16-1333 and 16-1334 herein.

Changes are made in phraseology.

**§ 16-1333. Notice of sale of excess property.**

When excess real property is to be sold pursuant to section 16-1332, notice of not less than twenty days before the sale shall be published in a daily newspaper published in the District of Columbia, and notice shall be sent before the sale, by registered mail or by certified mail, to the last-known address of the persons listed on the records of the assessor of the District as the owners of the property abutting on the property to be sold. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152; June 11, 1960, Pub. L. 86-507, § 1(47), 74 Stat. 203).

Section is based on part of section 16-613 of D.C. Code, 1916 ed. Remainder of section 16-613 is carried into sections 16-1332 and 16-1334 herein.

Changes are made in phraseology.

**§ 16-1334. Retention, for public use, of excess property.**

When the authorities of the District of Columbia or the United States having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District or the United States, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-613 (Apr. 11, 1936, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16-613 of D.C. Code, 1961 ed. Remainder of section 16-613 is carried into sections 16-1332 and 16-1333 herein.

Changes are made in phraseology.



**§ 16-1335. Availability of appropriations for purchase of excess property.**

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-614 (Apr. 11, 1935, ch. 57, § 3, 49 Stat. 153).

Changes are made in phraseology.

**§ 16-1336. Condemnation of excess real property by Board of Commissioners—Payment of awards, damages, and costs—No assessments for benefits.**

(a) When, pursuant to this subchapter, excess real property is condemned by the Board of Commissioners, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter I of this chapter, sections 7-202 to 7-212, 7-213a, 7-214, 7-215, or sections 7-301 to 7-305, 7-313 to 7-318, 7-320, 7-321 and 7-323.

(b) Appropriations available for the payment of awards, damages, and condemnation proceedings pursuant to subchapter I of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings under the sections referred to by subsection (a) of this section for the acquisition of excess real property, as provided by this subchapter.

(c) Appropriations available for the payment of awards, damages, and costs in condemnation proceedings pursuant to subchapter I of this chapter or sections 7301 to 7-305, 7-313 to 7-318, 7-320, 7-321 and 7-323 may be used in the payment of awards, damages, and costs in condemnation proceedings thereunder for the acquisition of excess real property as provided by this subchapter.

(d) In all cases where excess real property is condemned, assessments for benefits may not be levied by the jury in respect to the acquisition of the property. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-615 (Apr. 11, 1935, ch. 57, § 4, 49 Stat. 153).

In subsec. (a), the reference to section 7-213a (of D.C. Code, 1961 ed.) is substituted for the references in section 16-615 of D.C. Code, 1961 ed., to sections 7-213 and 7-322 (of that Code), as the latter two sections were repealed in 1951 by the same act that enacted section 7-213a, which related to the same subject (compensation of jurors in condemnation cases). It was the legislative intent that any references in other laws to the provisions set out in sections 7-213 and 7-322 should, after the repeal thereof, mean the provisions set forth in section 7-213a.

Changes are made in phraseology and arrangement.

**§ 16-1337. Condemnation of excess real property by United States agencies—Payment of awards, damages, and costs.**

When excess real property is condemned by agencies of the United States, other than the Board of Commissioners of the District of Columbia, as provided by this subchapter, the condemnation pro-

ceedings for the acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-616 (Apr. 11, 1935, ch. 57, § 5, 49 Stat. 153).

Changes are made in phraseology.

**§ 16-1338. Construction of subchapter.**

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-617 (Apr. 11, 1935, ch. 57, § 7, 49 Stat. 154).

Changes are made in phraseology.

**SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES**

**§ 16-1351. Definition.**

As used in this subchapter, "acquiring authority" means the head of an executive department or agency of the United States, or other officer of the United States, or board or commission of the United States, authorized by law to acquire real property in the District of Columbia for the construction of public building or work, or for parks, parkways, public playgrounds, or other public purpose. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415).

Section is based on part of section 16-619 of D.C. Code, 1961 ed. Remainder of section 16-619 is carried into sections 16-1301 and 16-1352 herein.

Changes are made in phraseology.

**§ 16-1352. Condemnation proceedings by Attorney General.**

When, for the purposes specified by section 16-1351, it is deemed necessary or advantageous to do so, the acquiring authority may acquire real property in the District of Columbia in the name of the United States by condemnation under judicial process. The Attorney General of the United States, upon the request of the acquiring authority, shall institute a proceeding for the condemnation of the property in the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 16-619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1994, ch. 139, § 127, 63 Stat. 107).



Section is based on part of section 16-619 of D.C. Code, 1961 ed. Remainder of section 16-619 is carried into sections 16-1301 and 16-1351 herein.

Words with reference to institution of the proceeding in the District Court, "holding a special term as a District Court of the United States," are omitted as obsolete. Terms of the United States District Court for the District of Columbia are now governed by sections 138-141 of Title 28, United States Code.

The provision that the condemnation proceeding shall be "in rem" is omitted as unnecessary, as any proceeding to condemn property is a proceeding in rem. See, for example, note of the Advisory Committee on subdivision (g) of rule 71A of the Federal Rules of Civil Procedure, which rule was formulated by that committee.

Changes are made in phraseology.

#### CROSS REFERENCE

Condemnation proceedings in cases concerning alleys and minor streets, see § 7-301 et seq.

### § 16-1353. Declaration of taking—Contents—Deposit—Transfer of title—Determination—Interest.

(a) In an action pursuant to this subchapter, the plaintiff may file in the cause, with the complaint or at any time before judgment, a declaration of taking signed by the acquiring authority empowered by law to acquire the property described in the complaint, declaring that the property is thereby taken for the use of the United States. The declaration of taking shall contain or have annexed thereto a—

- (1) statement of the authority under which and the public use for which the lands are taken;
- (2) description of the lands taken sufficient for the identification thereof;
- (3) statement of the estate or interest in the lands taken for public use;
- (4) plan showing the lands taken; and
- (5) statement of the sum of money estimated by the acquiring authority to be just compensation for the property taken.

Upon the filing of the declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, vests in the United States of America, and the property shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation therefor vests in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16-628 of D.C. Code, 1961 ed. Remainder of section 16-628 is carried into sections 16-1354 and 16-1355 herein.

The term "plaintiff" is substituted for "petitioner", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

### § 16-1354. Distribution of money deposited on declaration of taking—Judgment for deficiency.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1353, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency in the manner provided by rule 71A(j) of the Federal Rules of Civil Procedures. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16-628 of D.C. Code, 1961 ed. Remainder of section 16-628 is carried into sections 16-1353 and 16-1355 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the provision that "If the compensation finally awarded in respect of said lands or any parcel thereof shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency". Subdivision (j) of rule 71A now governs on this point.

Changes are made in phraseology.

### § 16-1355. Time for surrender of possession under declaration of taking—Adjustment of charges.

Upon the filing of a declaration of taking provided for by section 16-1353, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiff. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16-628 of D.C. Code, 1961 ed. Remainder of section 16-628 is carried into sections 16-1353 and 16-1354 herein.

Changes are made in phraseology.

### § 16-1356. Setting date for trial.

In a proceeding pursuant to this subchapter, after all defendants have been served with notice, and there has been return of service, as provided by rule 71A(d) of the Federal Rules of Civil Procedure, and after defendants have appeared or answered in the manner provided by rule 71A(e) thereof, either personally or by their guardians ad litem or other legal representatives, or are in default, the case shall be regarded as ready for trial, and, upon the application of any party to the proceeding, the court shall forthwith set an early date to be fixed by it, not less than ten nor more than twenty days from the date of the application, for the trial of the issues of law and fact raised in the case, and the



ascertainment of the compensation or damages to be awarded for the taking of the property to be condemned. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418).

Section is based on the first sentence of section 16-629 of D.C. Code, 1961 ed. Remainder of section 16-629 is carried into section 16-1357 herein.

In order to conform the provisions with the Federal Rules of Civil Procedure, which apply to condemnation proceedings in all United States district courts, the provisions of this section from the beginning to and through the word "default" are substituted for the following provisions of section 16-629 of D.C. Code, 1961 ed.: "When all the persons who have been summoned or published against in said case, as hereinbefore provided, have either answered or are in default as aforesaid, and all persons under legal disability have answered by their guardians ad litem, or in the judgment of the court ample opportunity has been given for the same". The words "as herein before provided", and "as aforesaid", in the preceding quoted provisions, refer to provisions of sections of D.C. Code, 1961 ed., which in this revision are omitted as superseded by some of the Federal Rules of Civil Procedure. Sections 16-621 to 16-624 thereof related to public notice of the proceeding by order of citation, contents of the order, publication, and notice thereof. These matters are now covered by rule 71A of the Federal Rules of Civil Procedure, and other rules thereof to which that rule refers. Sections 16-625 and 16-626 of the Code related to default in appearance, presumption of consent to the condemnation, and appearance after default, and were superseded by those rules (see particularly, rules 24, 55, and 71A(e) thereof). Section 16-627 of the Code related to the appointment of guardians ad litem for infants or incompetent persons, and was also superseded by the rules. See, particularly, rules 17(c) and 71A(g).

This section retains the provisions of section 16-629 of D.C. Code, 1961 ed., relating to the fixing of the date of trial, as they are not covered by the above-mentioned rules. Rule 40 relates to assignment of cases for trial, but the second sentence thereof provides that precedence shall be given to actions entitled thereto by any statute of the United States.

Changes are made in phraseology.

#### § 16-1357. Drawing of jurors, and selection of jury—Qualifications.

When the date for trial has been set, as provided by section 16-1356, the court shall thereupon order the jury commission to draw from the special box provided for by law the names of as many persons, not less than twenty, as the court directs, and to certify the names to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are real property owners in the District and

are not in the service or employment of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is based on all of section 16-629 of D.C. Code, 1961 ed., except the provisions thereof that are carried into section 16-1356 herein.

Changes are made in phraseology.

#### § 16-1358. Oath of jurors.

The jurors selected and impaneled, as provided by section 16-1357, shall take an oath or affirmation, administered by the court, that they:

(1) are not interested in any manner in the property to be condemned;

(2) are not, to their knowledge, related to any person interested in the property; and

(3) will, impartially and to the best of their judgment, ascertain, appraise, and award just compensation for the property to be condemned and taken in the proceeding.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-630 (Mar. 1, 1929, ch. 416, § 12, 45 Stat. 1418).

Changes are made in phraseology.

#### § 16-1359. Inspection of property by jury—Presence of parties.

After being selected, impaneled, and sworn, as provided by sections 16-1357 and 16-1358, and before hearing the evidence, the jury, in order to inspect the property to be acquired, shall be taken upon the property by the United States marshal at a time fixed by the court. All parties in interest, their attorneys, and representatives have the right to be present at the inspection. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-631 (Mar. 1, 1929, ch. 416, § 13, 45 Stat. 1418).

Changes are made in phraseology.

#### § 16-1360. Trial—Evidence—Measure of compensation.

After the inspection provided for by section 16-1359, and the jury has returned to the court, the trial of the cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of its taking, has the right to submit evidence concerning the value of the property, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the property. A new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the property to be taken, erected, or made thereon after the institution of the condemnation proceedings may not be taken into consideration in assessing and awarding compensation for the property. When the property to be valued has been taken by virtue of a declaration of taking, as provided by section 16-1353, it shall



be valued for the purposes of compensation as of the date of the taking. When, by act of the owner or other party claiming to be entitled to compensation, the value of the property for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if the plaintiff so elects, shall be made in accessing compensation for the diminution in value. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-632 (Mar. 1, 1929, ch. 416, § 14, 45 Stat. 1418).

The term "plaintiff" is substituted for "petitioner" to conform with terminology in the Federal Rules of Civil Procedure, which, under rule 71A thereof, generally apply in condemnation proceedings.

The final sentence of section 16-632 of D.C. Code, 1961 ed., provided as follows: "Every party, whether petitioner or respondent, may except to any ruling of the court admitting or excluding evidence, granting, rejecting, or modifying prayers for instruction, or other ruling made in the cause in like manner as in other civil trials". This sentence is omitted as obsolete and superseded by rule 46 of the Federal Rules of Civil Procedure, which provides that: "Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him". This rule, under rule 71A, applies to condemnation proceedings, as well as to other civil actions.

Changes are made in phraseology.

Additional provisions relating to the right to the presentation of evidence are contained in subdivision (e) of rule 71A of the Federal Rules of Civil Procedure, referred to above, which among other things provides that a defendant waives all defenses and objections not presented in his answer, but that "at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award".

#### § 16-1361. Verdict.

At the close of the evidence in a proceeding pursuant to this subchapter, the court shall charge the jury and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court. The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1951 ed., § 16-633 (Mar. 1, 1929, ch. 416, § 15, 45 Stat. 1419).

Minor changes are made in phraseology.

#### § 16-1362. Fixing date for new trial—New jurors.

If a verdict rendered pursuant to section 16-1361, or any award contained therein, is set aside or vacated, the court shall—

(1) grant a new trial with respect to the property as to which the verdict or award is set aside or vacated;

(2) fix a date for the new trial; and

(3) order a new panel of prospective jurors to be drawn, certified, or summoned as provided by section 16-1357.

The court shall then proceed with the cause as if a verdict or award had not been rendered. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-634 (Mar. 1, 1929, ch. 416, § 16, 45 Stat. 1419).

The first sentence of section 16-634 of D.C. Code, 1961 ed., provided, as follows: "The court shall have power to set aside or vacate the verdict of the jury, or any award contained therein, and to grant a new trial upon the same grounds as in other trials at law and upon the ground that said verdict, or any award contained therein is, in the judgment of the court, grossly excessive, or inadequate, or otherwise unreasonable or unjust". This sentence is omitted as covered by the Federal Rules of Civil Procedure, which under rule 71A thereof, generally apply to condemnation proceedings. See, particularly, rules 50, 53-62.

Changes are made in phraseology.

#### § 16-1363. Judgment.

Judgment upon a verdict returned pursuant to section 16-1361 or any award contained therein shall be entered against the United States in favor of the parties entitled for the sums awarded as just compensation, respectively, for the property condemned for the use of the United States. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-636 (Mar. 1, 1929, ch. 416, § 18, 45 Stat. 1420).

Words "Judgment upon a verdict returned under section 16-1361 or any award contained therein shall be entered against" are substituted for words "In the event that any verdict or any award contained therein shall become final by lapse of time or that any motion filed to set aside or vacate the same or to grant a new trial in respect thereof shall have been denied, or overruled, the court shall enter judgment against" as the time for entry of judgment, and other matters relating thereto, are now covered by the Federal Rules of Civil Procedure which, under rule 71A thereof, now generally apply to condemnation proceedings. See rule 58 of the rules. See, also, rules 59-62 thereof relating to new trials, amendments to judgments, relief from judgment or order, harmless error, and stay of proceedings to enforce a judgment.

Changes are made in phraseology.

#### § 16-1364. Force and effect of judgment—Payment.

A final judgment rendered against the United States pursuant to this subchapter has like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued. The amount of the final judgment shall be paid out of any specific appropriation applicable to the case. If a specific appropriation does not exist, the judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-637 (Mar. 1, 1929, ch. 416, § 19, 45 Stat. 1420).

Changes are made in phraseology.

**§ 16-1365. Appeal—Deficiency judgment.**

A party aggrieved by a final judgment in a proceeding pursuant to this subchapter may appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit. The appeal, or any bond or undertaking given therein, does not operate to prevent or delay the vesting of title to the property in the United States, but upon the filing of a declaration of taking, or, if a declaration of taking is not filed, upon payment to the party entitled, or deposit in the registry of the court, of the amount awarded by the judgment, title vests in the United States, saving to all parties their right to just compensation. If the compensation finally awarded and adjudged for the property exceeds the amount awarded and adjudged by the judgment appealed from, the court shall enter judgment for the deficiency with interest as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-638 (Mar. 1, 1929, ch. 416, § 20, 45 Stat. 1420; June 7, 1934, ch. 426, 48 Stat. 926).

The provision that, upon the appeal, the U.S. Court of Appeals should have power to review the judgment and affirm, reverse, or modify the same as on appeals in other actions at law, is omitted as unnecessary and covered by section 2106 of Title 28, United States Code.

Changes are made in phraseology.

**§ 16-1366. Payment of compensation into court—Vesting of title.**

Payment into the registry of the court for the use of the parties entitled of the sum adjudged to be just compensation for the property to be condemned and taken, or for any parcel thereof, or any interest therein, pursuant to this subchapter, constitutes payment of the compensation. Upon the payment, the plaintiff is entitled to an order declaring that the title to the property in respect of which the compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in the property, according to their respective estates and interest, and the money shall take the place and stand in lieu of the property condemned. The court, upon the application of the plaintiff or of any party in interest, may determine and direct who is entitled to receive payment of the money so paid into the registry, and, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which the determination and direction are to be made. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-639 (Mar. 1, 1929, ch. 416, § 21, 45 Stat. 1420).

Changes are made in phraseology.

**§ 16-1367. Delivery of possession.**

Where possession has not been awarded pursuant to a declaration of taking, and the adjudged compensation has been paid into the registry as directed by the judgment of the court and a certified copy

of the judgment, with a certificate of the clerk of the court showing the payment, has been served upon the person in possession of the property, he shall, upon demand, deliver possession thereof to the plaintiff. If possession is not delivered when so demanded, the plaintiff may apply to the court without notice, unless the court requires notice to be given, for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as referred to in this section, shall thereupon cause the writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-640 (Mar. 1, 1929, ch. 416, § 22, 45 Stat. 1421).

Changes are made in phraseology.

**§ 16-1368. Additional powers of court.**

Where the mode or manner of conducting a proceeding pursuant to this subchapter is not expressly provided for by law or rules of court in force under authority of law, the court may make all necessary orders and give all necessary directions to carry into effect the object and intent of this subchapter or any other laws conferring authority to acquire real property for the use of the United States. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-642 (Mar. 1, 1929, ch. 416, § 24, 45 Stat. 1421).

Words "or rules of court in force under authority of law" are inserted because, under rule 71A of the Federal Rules of Civil Procedure, those rules now generally apply in condemnation proceedings. Rule 71A, itself, contains a number of provisions relating to practice and procedure in such proceedings. Further, rule 83 of the rules permits district courts to make and amend rules governing their practice and to regulate their practice in any manner, not inconsistent with the said Federal Rules of Civil Procedure.

Changes are made in phraseology.

**Chapter 15.—FORCIBLE ENTRY AND DETAINER**

## Sec.

16-1501. Definition—Summons.

16-1502. Service of summons.

16-1503. Judgment and execution for possession.

16-1504. Certification to District Court upon plea of title—Undertaking.

16-1505. Conclusiveness of judgment.

**§ 16-1501. Definition—Summons.**

When a person detains possession of real property without right, or after his right to possession has ceased, the District of Columbia Court of General Sessions, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-735, 11-751a (Mar. 3, 1901, ch. 854, § 20, 31 Stat. 1193; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555; June 18, 1953, ch. 130, § 1, 67 Stat. 66; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).



Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

#### CROSS REFERENCE

Procedure, see § 13-101.

See also, §§ 22-3101, 45-820 to 45-910.

### § 16-1502. Service of summons.

The summons procided for by section 16-1501 shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-736 (Mar. 3, 1901, ch. 854, § 21, 31 Stat. 1193).

Minor changes are made in phraseology.

### § 16-1503. Judgment and execution for possession.

When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-737 (Mar. 3, 1901, ch. 854, § 22, 31 Stat. 1193).

Minor changes are made in phraseology.

### § 16-1504. Certification to District Court upon plea of title—Undertaking.

When, upon a trial in a proceeding pursuant to this chapter, the defendant pleads title to the premises, in himself or in another under whom he claims, setting forth the nature of the title, under oath, and enters into an undertaking, with sufficient surety, to be approved by the court, to pay all intervening damages and costs and reasonable intervening rent for the premises, the court shall certify the proceedings to the United States District Court for the District of Columbia, and the proceeding shall be further continued in the District Court according to its rules. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-738 (Mar. 3, 1901, ch. 854, § 23, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 446, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

### § 16-1505. Conclusiveness of judgment.

A judgment of the District of Columbia Court of General Sessions in a proceeding pursuant to this chapter is not a bar to any afteraction brought by

either party, and does not conclude any question of title between them, where title is not pleaded by the defendants. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-739, 11-751a (Mar. 3, 1901, ch. 854, § 24, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 12, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

## Chapter 17.—GAMING TRANSACTIONS

Sec.

16-1701. Invalidity of gaming contracts.

16-1702. Recovery of losses at gaming.

16-1703. Relief from further penalty upon discovery and repayment of losses.

16-1704. Cheating at gambling.

### § 16-1701. Invalidity of gaming contracts.

(a) A thing in action, judgment, mortgage, or other security or conveyance made and executed by a person in which any part of the consideration is for money or other valuable things won by playing at any game whatsoever, or by betting on the sides or hands of persons who play, or for the reimbursement or payment of any money knowingly lent or advanced for the purpose, or lent or advanced at the time and place of the play or bet, to a person so playing or betting or who, during the play, so plays or bets, is void except as provided by subsection (b) of this section.

(b) If the mortgage, security, or other conveyance affects real property, it shall inure to the sole benefit of, and devolve upon, the persons who might have, or be entitled to, the property, as if the person who executed the instrument had died immediately after its execution, or as if the instrument had been made to the persons so entitled after the death of the person who executed it. A grant or conveyance made for the purpose of preventing the real property from coming to, or devolving upon, the persons intended by this section to enjoy the property as herein provided is fraudulent and void.

(c) This section does not affect the validity of negotiable instruments embraced by chapters 1 to 10 of Title 28. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-701 (9 Ann. 14, § 1, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 689; Comp. Stat. D.C., p. 243, § 12).

The provisions set out in subsec. (c) are inserted for the purpose of clarification. See the case of *Wirt v. Stubblefield*, 17 App. D.C. 283.

Changes are made in phraseology and arrangement.

### § 16-1702. Recovery of losses at gaming.

A person who, at any time or sitting, by playing at cards, dice or any other game, or by betting on the sides or hands of persons who play, loses to a person so playing or betting, a sum of money, or other valuable thing, amounting to \$25 or more, and pays



or delivers the money or thing, or any part thereof, may, within three months after the payment or delivery, sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with costs. If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-702 (9 Ann. ch. 14, § 2, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 690; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 244, § 13; R.S., D.C., § 837; Md. Act 1777, ch. 6, § 1).

The amount of "twenty-six dollars and sixty-seven cents" is rounded to the amount of \$25, which is the approximate American equivalent of the British sum specified by the original statute.

The term "civil action" is substituted for "action of debt" to conform with rule 2 of the Federal Rules of Civil Procedure and of the civil rules of the Court of General Sessions; and words "in which actions or suits no more than one imparlance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won by the plaintiff's to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this section, without setting forth the special matter" are omitted as covered or superseded by, or inconsistent with, rules of pleading as set forth in rules of court. See, particularly, rules 7-9 of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions, and rule 4 of the small claims rule of Court of General Sessions.

The provision that the action may "be prosecuted in any court of record" is omitted as inconsistent with provisions governing civil jurisdiction of the District Court and the Court of General Sessions. See sections 11-521 (a) (1), 11-961, and 11-1341 herein.

Changes are made in phraseology.

#### § 16-1703. Relief from further penalty upon discovery and repayment of losses.

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16-1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-703 (9 Ann. ch. 14, § 4, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Comp. Stat. D.C., p. 244, § 15).

Minor changes are made in phraseology.

#### § 16-1704. Cheating at gambling.

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of \$25, shall, upon conviction of the

offense, forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16-1702. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-704 (9 Ann. ch. 14, § 5, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Md. Act 1780, ch. 23, § 3; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 245, § 16).

Surplusage is omitted, and changes are made in phraseology.

### Chapter 19.—HABEAS CORPUS

#### Sec.

- 16-1901. Petition to District Court—Issuance of writ.
- 16-1902. Service of writ—Return.
- 16-1903. Suspected evasion or disobedience of writ—Procedure.
- 16-1904. Forfeiture and penalty for failure to produce.
- 16-1905. Right to copy of commitment—Forfeiture.
- 16-1906. Inquiry into cause of detention—Bail—Bond.
- 16-1907. Traversing return—Pleading—Witnesses.
- 16-1908. Right of other persons to writ.
- 16-1909. Construction of chapter.

#### § 16-1901. Petition to District Court—Issuance of writ.

A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the United States District Court for the District of Columbia, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is, returnable forthwith before the court or judge. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-801 (Mar. 3, 1901, ch. 854, § 1143, 31 Stat. 1372; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

#### CROSS REFERENCE

Special proceedings for commitment or discharge of feeble-minded person do not abridge right to petition for writ of habeas corpus, see § 32-618.

#### § 16-1902. Service of writ—Return.

A writ of habeas corpus issued pursuant to this chapter shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained. The officer or other person shall forthwith, or within such reasonable time as the court or judge directs:

- (1) make return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ; and
- (2) certify the true cause of his detainer or imprisonment, if any, and under what color or pretense he is confined or restrained of his liberty. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-802 (Mar. 3, 1901, ch. 854, § 1144, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

### § 16-1903. Suspected evasion or disobedience of writ—Procedure.

On an application for a writ of habeas corpus, if probable cause is shown for believing that the person charged with confining or detaining the person applying therefor, or on whose behalf the application is made:

(1) is about to remove the person so detained from the place where he is then detained, for the purpose of evading a writ of habeas corpus, or for other purposes; or

(2) he would evade or not obey a writ of habeas corpus—

the court or judge shall insert in the writ a clause commanding the United States marshal to serve the writ on the person to whom it is directed and cause him immediately to appear before the court or judge, together with the person so confined or detained. Thereupon, the marshal shall immediately carry those persons before the court or judge, and the court or judge shall proceed to inquire into the matter. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-803 (Mar. 3, 1901, ch. 854, § 1145, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

### § 16-1904. Forfeiture and penalty for failure to produce.

If an officer or other person to whom a writ of habeas corpus is directed neglects or refuses to:

(1) make return of the writ; or

(2) bring the body of the person detained—according to the command of the writ, he shall forfeit to the person detained the sum of \$500, and be liable to attachment and punishment as for a contempt. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-804 (Mar. 3, 1901, ch. 854, § 1146, 31 Stat. 1372).

Changes are made in phraseology.

### § 16-1905. Right to copy of commitment—Forfeiture.

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of \$500. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-805 (Mar. 3, 1901, ch. 854, § 1147, 31 Stat. 1372).

Changes are made in phraseology.

### § 16-1906. Inquiry into cause of detention—Bail—Bond.

On the return of a writ of habeas corpus issued pursuant to this chapter and the production of the person detained, the court or judge shall immedi-

ately inquire into the legality and propriety of the confinement or detention. If it appears that the person is detained without legal warrant or authority, the court or judge shall immediately release or discharge him. If the court or judge deems his detention to be lawful and proper, the court or judge shall remand him to the same custody, or, in a proper case, admit him to bail, if he is confined on a charge of having committed a bailable criminal offense. If he is bailed, the court or judge shall require a sufficient bond or recognizance to answer in the proper court, and transmit it to that court. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-806 (Mar. 3, 1901, ch. 854, § 1148, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

### § 16-1907. Traversing return—Pleading—Witnesses.

A person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention. The court or judge may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause pending in the court, if the court or judge is satisfied as to the materiality of the testimony proposed to be adduced. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-807 (Mar. 3, 1901, ch. 854, § 1149, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

### § 16-1908. Right of other persons to writ.

A person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-808 (Mar. 3, 1901, ch. 854, § 1150, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

## CROSS REFERENCE

Custody of children in divorce cases, see § 16-911.

### § 16-1909. Construction of chapter.

This chapter does not affect any provision of chapter 153 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Section is new, and is inserted for the purpose of construction.

Chapter 153 of Title 28, United States Code, also relates to habeas corpus and applies to Federal courts generally, including the United States District Court for the District of Columbia. Upon the reenactment of the provisions carried into this chapter, they will constitute a later enactment than Title 28, United States Code, which was enacted in 1948. Considering the local character of the provisions carried into this chapter, there should not arise, as a general rule, even without this section, any question of conflict. However, this section is inserted as a precautionary measure.

## Chapter 21.—JOINT CONTRACTS

Sec.

- 16-2101. Definition of joint and several contracts.
- 16-2102. Death of party to the contract.
- 16-2103. Extinguishment or merger of cause of action.
- 16-2104. Death after action brought—Legal representatives.
- 16-2105. Proof of joint liability unnecessary—Judgment.
- 16-2106. Separate composition or compromise.

## § 16-2101. Definition of joint and several contracts.

For the purposes of action thereon, a contract or obligation entered into by two or more persons, whether:

- (1) the persons are partners or joint contractors;
- (2) the contract is under seal or not;
- (3) it is written or verbal; or
- (4) it is expressed to be joint and several or not—

is deemed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-901 (Mar. 3, 1901, ch. 854, § 1205, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

## § 16-2102. Death of party to the contract.

If a person specified by section 16-2101 dies, his executors, administrators, or heirs are bound by the contract in the same manner and to the same extent as if the contract or obligation were expressed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-902 (Mar. 3, 1901, ch. 854, § 1206, 31 Stat. 1380).

Changes are made in phraseology.

## § 16-2103. Extinguishment or merger of cause of action.

Where, with respect to a contract specified by section 16-2101, an action is brought against:

- (1) all the parties thereto, but service of process is had on some, only, of the defendants; or
- (2) some, only, of the parties thereto, and service of process is had on them only—

a judgment against the parties so served does not work an extinguishment or merger of the cause of action on which the judgment is founded as respects the parties not so served. They shall remain liable to be sued separately. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-903 (Mar. 3, 1901, ch. 854, § 1207, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

## § 16-2104. Death after action brought—Legal representatives.

When one of several defendants in an action dies after the commencement of the action, his legal representatives may be made parties to the action as directed by chapter 1 of Title 12. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-904 (Mar. 3, 1901, ch. 854, § 1208, 31 Stat. 1380).

Minor changes are made in phraseology.

## § 16-2105. Proof of joint liability unnecessary—Judgment.

In actions ex contractu against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action. He is entitled to recover, as in actions ex delicto, against such of the defendants as are shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment shall be rendered as if the others had not been joined in the action. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-905 (Mar. 3, 1901, ch. 854, § 1209, 31 Stat. 1380).

Minor changes are made in phraseology.

## § 16-2106. Separate composition or compromise.

Any one of several joint debtors when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties by chapter 2 of Title 41. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-906 (Mar. 3, 1901, ch. 854, § 1210, 31 Stat. 1380).

The only change is the substitution, for the reference to "sections 41-101 to 41-131, 41-201 to 41-204", of a reference to the particular chapter in Title 41 relating to separate composition or compromise settlements with creditors, upon the dissolution of partnerships. Chapter 2 of Title 41 of D.C. Code, 1961 ed., embraces sections 41-201 to 41-204, cited above. The other sections cited above are not relevant.

## Chapter 23.—JUVENILE COURT PROCEEDINGS

## SUBCHAPTER I.—JUVENILE DELINQUENCY PROCEEDINGS AND RELATED MATTERS

Sec.

- 16-2301. Definitions.
- 16-2302. Information regarding child—Investigation—Petition—Contents.
- 16-2303. Summons—Notice—Custody of child.
- 16-2304. Service of summons—Time of hearing.
- 16-2305. Failure to obey summons—Contempt—Warrant.
- 16-2306. Taking child into custody—Release to custody of parent, guardian, custodian, or probation officer—Limitation or detention.
- 16-2307. Hearing—Exclusion of Public—Jury trial.
- 16-2308. Determination and order of Court.
- 16-2309. Modification or revocation of order—Petition—Return of child, or other action.
- 16-2310. Appointment of guardian—Custody as between parents.
- 16-2311. Protection of religious affiliations.
- 16-2312. Physical and mental examinations of children.
- 16-2313. Place of detention of children.



Sec.

- 16-2314. Applicability to adult cases—Offenses and Penalties—Jury trial.
- 16-2315. Finality of judgments.
- 16-2316. Construction and purpose.

## SUBCHAPTER II.—PATERNITY PROCEEDINGS

- 16-2341. Definitions.
- 16-2342. Party plaintiff—Information.
- 16-2343. Time of bringing complaint.
- 16-2344. Commencement of proceeding—Complaint.
- 16-2345. Apprehension of accused.
- 16-2346. Bond—Commitment—Right to jury trial.
- 16-2347. Blood tests.
- 16-2348. Exclusion of public.
- 16-2349. Judgment.
- 16-2350. Support payments.
- 16-2351. Voluntary agreement for support—Approval—Order of court—Exclusion of other remedies.
- 16-2352. Death of defendant—Liability of estate.
- 16-2353. New birth record upon marriage of natural parents.
- 16-2354. Reports to Director of Public Health.
- 16-2355. Applicability of sections relating to desertion or nonsupport.
- 16-2356. Construction.

## SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

- 16-2381. Payments for support and maintenance under section 29-903 to 22-905—Voluntary payments—Disbursement.
- 16-2382. Jury.
- 16-2383. Suspension of imposition or execution of sentence.
- 16-2384. Fees prohibited.

## SUBCHAPTER I.—JUVENILE DELINQUENCY PROCEEDINGS AND RELATED MATTERS

## § 16-2301. Definitions.

As used in this subchapter:

“adult” means a person 18 years of age or older; and

“child” means a person under 18 years of age. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961, ed., § 11-906 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section is based on subsec. (b) of section 11-906 of D.C. Code, 1961 ed. For remainder of that section, see tables.

The provisions defining “the court” as meaning the juvenile court of the District of Columbia, and “judge” as meaning the judge of the juvenile court, are omitted as unnecessary. Section 16-2302 gives the complete name of the court, and the other sections in this subchapter are reworded or related so that there is no question as to what court and judge are meant. Further, there are now three judges of the court. See, also, section 11-1551 vesting in the Juvenile Court jurisdiction of matters to which this subchapter relates, and other provisions in chapter 15 of Title 11.

Changes are made in phraseology.

The definitions contained in section 11-906 of D.C. Code, 1961 ed., also related to the same terms as used in provisions carried into chapter 15 of Title 11, which are from the same chapter in D.C. Code, 1961 ed. However, as carried into chapter 15 of Title 11, those provisions are reworded in such a way that it is not necessary to extend the reference in the opening clause in this section to that chapter, nor to define the terms as used therein. See revision note under section 11-1551.

## § 16-2302. Information regarding child—Investigation—Petition—Contents.

When a person gives to the Director of Social Work of the Juvenile Court of the District of Colum-

bia, or other officer of the court duly designated as his representative, information in his possession that a child is within the provisions of section 11-1551, a duly designated officer of the court shall make preliminary investigation to determine whether the interests of the public or of the child require that further action be taken, and report his finding, together with a statement of the facts, to the Director of Social Work. When practicable, the inquiry shall include a preliminary investigation of the home and environmental situation of the child, his previous history, and the circumstances that were the subject of the information. When the Director of Social Work finds that jurisdiction should be acquired, he shall, after consultation with and approval by the corporation counsel or his assistant assigned to the court, authorize a petition to be filed. Where the Director fails so to find, the person giving information to the Director may present the facts to the corporation counsel or his assistant, who, after investigation by an officer of the court as herein provided, may authorize a petition to be filed. The proceedings shall be entitled, “In the matter of \_\_\_\_\_, a child under eighteen years of age.”

The petition shall be verified by the officer making the investigation, or other person having personal knowledge of the case, and shall allege briefly the facts which bring the child within the provisions of section 11-1551, and shall state the name, age, and residence of—

- (1) the child;
- (2) his parents;
- (3) his legal guardian, if there be one;
- (4) the person or persons having custody or control of the child; and
- (5) the nearest known relative, if no parent or guardian can be found.

When any of the facts herein required are not known by the petitioner the petition shall so state. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-908 (Mar. 19, 1906, ch. 960, § 7, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596 (597)).

## § 16-2303. Summons—Notice—Custody of child.

After a petition has been filed pursuant to section 16-2302, unless the parties hereinafter named voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have custody or control of the child to appear personally and bring the child before the court at a time and place stated. Where the person so summoned is other than the parent or guardian of the child, the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided. If the child is married, the other spouse shall also be so notified. Summons may be issued requiring the appearance of any other person whose presence is necessary.

Where it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court,



the court may cause to be endorsed upon the summons an order that the officer serving it shall at once take the child into custody. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-909 (Mar. 19, 1906, ch. 960, § 8, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

#### § 16-2304. Service of summons—Time of hearing.

Service of summons issued pursuant to section 16-2303 shall be made personally by the delivery of a true and attested copy to the person summoned. Where reasonable, but unsuccessful efforts have been made to make personal service of summons or notice and it appears that it is impracticable to do so, the court may order service of summons or notice by registered mail to the last-known address or by publication, or both, as it deems necessary. It is sufficient to confer jurisdiction if service is effected at any time before the date fixed in the summons for the return thereof, but, on request of the parent or guardian or person having custody of the child, the hearing on the petition may not take place until three days after service of the summons.

The United States marshal for the District of Columbia or his deputy shall execute the orders and processes of the Court in the same manner as he executes those of the United States District Court for the District of Columbia, and shall designate at least one of his deputies to serve at the court, where he shall perform such services as the judge requires. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-910 (Mar. 19, 1906, ch. 960, § 9, 34 Stat. 74; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

#### § 16-2305. Failure to obey summons—Contempt—Warrant.

When a person summoned as provided by sections 16-2303 and 16-2304, without reasonable cause, fails to appear, he may be proceeded against for contempt of court. When the summons can not be served, or the parties served fail to obey it, or the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued against the parent or guardian or against the child himself. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-911 (Mar. 19, 1906, ch. 960, § 10, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

#### § 16-2306. Taking child into custody—Release to custody of parent, guardian, custodian, or probation officer—Limitation on detention.

(a) When an officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon, the child may be released in the cus-

tody of a parent, guardian, or custodian. If not so released, the child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.

(b) A child whose custody has been assumed by the court may, pending final disposition of the case, be released by the court in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, the child, pending the hearing of the case, shall be detained in a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, subject to further order of the court.

(c) This subchapter does not forbid a peace officer, police officer, or probation officer from immediately taking into custody a child:

- (1) who is found violating a law or ordinance; or
- (2) who is reasonably believed to be a fugitive from his parents or from justice; or
- (3) whose surroundings are such as to endanger his health, morals, or safety, unless immediate action is taken.

In a case specified by this subsection, the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided by this subchapter and chapter 15 of Title 11. A child so taken into custody may not be held in a place of detention for a period longer than five days, excluding Sundays and holidays, unless the court orders him detained for a further period. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-912 (Mar. 19, 1906, ch. 960, § 11, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 12, 1952, ch. 417, § 1, 66 Stat. 134), and on Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 58, June 30, 1953, as amended July 31, 1953, and Aug. 19, 1954; Reorg. Ord. No. 57-1027, June 6, 1957.

The Board of Public Welfare, referred to in section 11-912 of D.C. Code, 1961 ed., was, along with a number of other District agencies and offices, abolished, and its functions transferred to the Board of Commissioners of the District of Columbia, by Presidential Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824, which authorized the Board of Commissioners to create new agencies and offices and delegate its functions thereto. Pursuant to that Plan, the Board of Commissioners, after temporarily continuing the functions, so transferred, in the agencies and offices so abolished, by Reorg. Ord. No. 1, July 1, 1952, created the Department of Public Health by Reorg. Ord. No. 57, June 30, 1953, and the Department of Public Welfare by Reorg. Ord. No. 58, June 30, 1953, as amended, and abolished their predecessors, effective Aug. 15, 1953. Part V of Reorg. Ord. No. 58 transferred specified functions of the former Board of Public Welfare to the Department of Public Health and the Department of Public Welfare, so created. However, under Presidential Reorg. Plan No. 5, eff. July 1, 1952, referred to above, the ultimate responsibility to perform the delegated functions is in the Board of Commissioners, which may change the present organization at any time. Therefore, in two places in this revised section, the reference, "Board of



Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative".

Changes are made in phraseology and arrangement.

#### § 16-2307. Hearing—Exclusion of public—Jury trial.

The court may conduct a hearing pursuant to this subchapter in an informal manner, and may adjourn the hearing from time to time. The general public shall be excluded from the hearing and only such persons as have a direct interest in the case and their representatives may be admitted except that the judge presiding at the hearing, by rule of court or special order, may admit such other persons as he deems to have a legitimate interest in the case or the work of the court. Cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury is demanded by the child, his parent, guardian, or the court. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596, (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is based on first paragraph of section 11-915 of D.C. Code, 1961 ed. Remainder of that section is carried into section 16-2308 herein.

Words "the judge presiding at the hearing" are substituted for "the judge" for the purpose of clarification, since there are now three judges of the Juvenile Court. [See section 11-1502 herein.]

Changes are made in phraseology.

#### § 16-2308. Determination and order of the Court.

(a) When the court finds that the child comes within the provisions of this subchapter and section 11-1551, it may by order duly entered:

(1) place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court determines;

(2) commit the child to the Board of Commissioners of the District of Columbia or its authorized representative; or to the National Training School for Boys if in need of such care as is given in the school; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of the child without expense to the public; or

(3) make such further disposition of the child as may be provided by law and as the court deems to be best for the best interests of the child.

Paragraphs (1), (2), and (3) of this subsection do not authorize the removal of the child from the custody of his parents unless his welfare and the safety and protection of the public can not be adequately safeguarded without the removal.

(b) In committing a child to custody other than that of its parent, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in such manner as the court directs a sum that will cover in whole or in part the support of the child. If the parents willfully fails or refuses to pay the sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence.

(c) When the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child.

(d) An adjudication upon the status of a child in the jurisdiction of the court does not operate to impose any of the civil disabilities ordinarily imposed by conviction, and a child is not deemed a criminal by reason of an adjudication. An adjudication is not deemed a conviction of a crime, and a child may not be charged with or convicted of a crime in any court, except as provided by section 11-1553. The disposition made of a child, or evidence given in the court, is not admissible as evidence against the child in any case or proceeding in any other court, and the disposition, or evidence, or adjudication, does not operate to disqualify a child in any future civil-service examination, appointment, or application for public service under either the Government of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is derived from all of section 11-915 of D.C. Code, 1961 ed., except the first paragraph thereof. The first paragraph is carried into section 16-2307 herein.

In subsec. (a) (2), the reference, "Board of Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16-2306 herein.

Changes are made in phraseology and arrangement.

#### § 16-2309. Modification or revocation of order—Petition—Return of child, or other action.

An order of commitment or probation made by the court in the case of a child may be modified or revoked by the court from time to time.

A parent, guardian, or next friend of a child who has been committed by the court to the custody of an institution, agency, or person, may at any time file with the court a verified petition, making application for modification or revocation of an order of commitment or probation, stating that the institution, agency, or person has denied application for the release of the child or has failed to act upon the application within a reasonable time. When the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that the child be restored to the custody of its parent or guardian, or be retained in the custody of the institution, agency, or person; and may direct the institution, agency, or person to make such other arrangements for the child's care and welfare as the circumstances of the case require; or the court may make a further order or commitment. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-916 (Mar. 19, 1906, ch. 960, § 15, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596(600)).

Changes are made in phraseology.



### § 16-2310. Appointment of guardian—Custody as between parents.

When in the course of a proceeding instituted pursuant to this subchapter it appears to the court that the welfare of a child will be promoted by the appointment of a relative or other suitable individual as guardian of its person, when the child is not committed to an institution or to the custody of an incorporated society, the court has jurisdiction to make the appointment either upon the application of the child or some relative or next friend or upon the court's own motion. The court may issue an order to show cause, which shall be served upon the parent or parents or custodian of the child in such manner and for such time prior to the hearing as the court deems reasonable. In a case arising pursuant to this subchapter, the court may also determine as between parents whether the father or the mother shall have the custody and control of the child. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-917 (Mar. 19, 1906, ch. 960, § 16, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Changes are made in phraseology.

### § 16-2311. Protection of religious affiliations.

In placing a child under guardianship or custody other than that of its parent, the court, when practicable, shall select a person, or an institution or agency governed by persons, of like religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-918 (Mar. 19, 1906, ch. 960, § 17, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology.

### § 16-2312. Physical and mental examinations of children.

The court may cause a child coming under its jurisdiction to be examined by a physician, psychiatrist, or psychologist appointed by it. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-926 (Mar. 19, 1906, ch. 960, § 25, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Changes are made in phraseology.

#### CROSS REFERENCES

Services of a psychiatrist and psychologist, see § 24-106.

### § 16-2313. Place of detention of children.

(a) Except as provided by subsection (b) of this section, a child may not be placed in or committed to any prison, jail, or lockup, or be taken into custody, detained, or transferred from place to place, where he may be brought in contact or communication with an adult convicted of crime or under arrest and charged with crime.

(b) A child 16 years of age or older, whose habits or conduct are deemed such as to constitute a menace to other children, may, with the consent of a

judge or Director of Social Work, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults.

(c) The Board of Commissioners of the District of Columbia or its authorized representative shall make adequate provision for the temporary detention of children within its jurisdiction in a detention home or in boarding homes selected for the purpose. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-927 (Mar. 19, 1906, ch. 960, § 26, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87-413, § 3(d), 76 Stat. 22).

Near the beginning of subsec. (a), "child" is substituted for "child under 18 years of age", as section 16-2301 herein defines "child" as meaning a person under 18 years of age.

The reference, "Board of Public Welfare of the District of Columbia", is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16-2306 herein.

Changes are made in phraseology and arrangement.

### § 16-2314. Applicability to adult cases—Offenses and penalties—Jury trial.

(a) All provisions of this subchapter relative to procedure in cases of children so far as practicable apply also to cases against adults arising under section 11-1511, 11-1554, 11-1555 or 11-1556, or any of the sections referred to in section 11-1557, with the consent of the defendant, or when not inconsistent with other provisions of law relating to the conduct of adult cases. Proceedings may be instituted upon complaint of an interested party or upon the court's own motion, and a reasonable opportunity to appear shall be afforded the respondent. The court may issue a summons, a warrant of arrest, or other process in order to secure or to compel the attendance of a necessary person.

(b) Whoever, by act or omission, willfully causes, encourages, or contributes to a condition which would bring a child within the provisions of section 11-1551 or tends to cause such a condition, is guilty of a misdemeanor, and shall be fined not more than \$200 or imprisoned not more than one year, or both. Upon the trial, the court may impose such sentence as the law provides, or may suspend sentence and place on probation, and by order impose upon the adult such duty as is deemed to be for the best interests of the child or other persons concerned. If an adult is charged with an offense for which he is entitled to a trial by jury, he shall be so tried unless he expressly waives his right to jury trial. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-919 (Mar. 19, 1906, ch. 960, § 18, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology and arrangement.

### § 16-2315. Finality of judgments.

Except as provided by sections 11-741(a)(3), 11-741(b), 17-305(a), 17-306 and 17-307(a), in all cases tried before the court pursuant to this subchapter, the judgment of the court is final. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-938 (Mar. 19, 1906, ch. 960, § 37, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).



With respect to the exception, section 11-938 of D.C. Code, 1961 ed., referred to section 11-934 thereof. The latter section, which provided for appeals from judgments of the Juvenile Court to the United States Court of Appeals for the District of Columbia, and for the procedure thereon, was repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110. Since 1942, the Municipal Court of Appeals for the District of Columbia, the name of which, by the Act of Oct. 23, 1962, Pub. L. 87-873, 6, 76 Stat. 1172, was changed to the District of Columbia Court of Appeals, has had jurisdiction of appeals from judgments of the Juvenile Court. Therefore, in this revised section, reference to the sections providing for such appeals, and the procedure thereon, are substituted for the reference to section 11-934. See, also, Rules of the District of Columbia Court of Appeals.

Minor changes are made in phraseology.

#### § 16-2316. Construction and purpose.

Sections 11-1551 to 11-1554, section 11-1583 (a) (1) and (a) (3), section 11-1584, section 11-1586 (a)—(d), and this subchapter shall be liberally construed so that, with respect to each child coming under the court's jurisdiction:

(1) the child shall receive such care and guidance, preferably in his own home, as will serve his welfare and the best interests of the District; and

(2) the child's family ties shall be conserved and strengthened whenever possible, and, except when his welfare or the safety and protection of the public can not be adequately safeguarded without his removal, he may not be removed from the custody of his parents; and

(3) when the child is removed from his own family, the court shall secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given him by his parents.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-902, 11-903 (Mar. 19, 1906, ch. 960, pream., as added June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 2, 34 Stat. 73, as amended June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates sections 11-902 and 11-903 of D.C. Code, 1961 ed.

"District" is substituted for "state", to correct an obvious error.

Changes are made in phraseology.

### SUBCHAPTER II.—PATERNITY PROCEEDINGS

#### § 16-2341. Definitions.

As used in this subchapter:

"Corporation Counsel" has the meaning prescribed by section 11-1583(b).

"Director of Public Health" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to have jurisdiction of, control, direct, and supervise, matters relating to public health and vital statistics in the District; and

"Metropolitan Police Department" means the Board of Commissioners of the District of Columbia or the agency designated by the Board to serve as the law enforcement agency for the District. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Section is new, but does not make any new law.

Definition of "Corporation Counsel" is inserted. See section 11-1583(b), and revision note under section 11-1583.

Definitions of "Director of Public Health" and "Metropolitan Police Department" are inserted because of the reorganizational Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That Plan abolished a number of offices and agencies in the District, including the Health Department and the Metropolitan Police Department, transferred their functions to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the Health Department and the Metropolitan Police Department, issued Reorganization Order No. 7, Sept. 16, 1952, which, by sections 1 and 3 thereof, abolished the office of Major and Superintendent of the Metropolitan Police Department and transferred the functions thereof to the Chief of Police, an office established by section 4(b) of the above-cited Presidential Reorganization Plan No. 5. Subsequently, the Board, by Reorganization Order No. 46, June 26, 1953, as amended by Orders of May 17, 1955 and Oct. 20, 1955 (eff. Dec. 1, 1955), and by Reorganization Order No. 56-214, Jan. 31, 1956, established a new Metropolitan Police Department, headed by the Chief of Police, transferred to that department the functions of the Metropolitan Police Department previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above, abolished the then existing Metropolitan Police Department, and repealed all previous orders of the Board in conflict therewith.

By Reorganization Order No. 57, June 30, 1953, as amended June 30, 1954, and as amended by Reorganization Orders Nos. 54-2546, Nov. 30, 1954; 56-1717, Aug. 23, 1956; 56-2541, Dec. 13, 1956, the Board created a new Department of Public Health, with a Director of Public Health at its head, transferred to that department the functions (which included those relating to vital statistics) of the former Health Department, abolished the then existing Health Department, and repealed all previous orders of the Board in conflict therewith.

However, under the above-mentioned Presidential Reorganization Plan No. 5, the ultimate responsibility to perform the functions transferred to the present Department of Public Health and the Metropolitan Police Department is in the Board of Commissioners, and the Board may change the present organization at any time. Therefore, the purpose of the definitions of "Director of Public Health" and "Metropolitan Police Department" in this section is to recognize this ultimate responsibility and to provide for changes in organization should they occur.

#### § 16-2342. Party plaintiff—Information.

Proceedings pursuant to section 11-1555 and this subchapter shall be instituted in the Juvenile Court of the District of Columbia in the name of the District of Columbia, and prosecution upon information shall be by the Corporation Counsel for the District of Columbia or his assistants. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is based on the second sentence of section 11-951 of D.C. Code, 1961 ed. For remainder of that section, see tables.

Minor changes are made in phraseology.

#### § 16-2343. Time of bringing complaint.

Proceedings to establish paternity and provide for the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father has ceased making contributions for the support of the child. The time during which the defendant is absent from the jurisdiction shall be excluded from the computation of



the time within which complaint may be filed. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-952 (Jan. 11, 1951, ch. 1225, § 4, 64 Stat. 1240).

Minor changes are made in phraseology.

### § 16-2344. Commencement of proceeding—Complaint.

An unmarried woman who is at least four months pregnant or who has been delivered of a child born out of wedlock, or a married woman who is at least four months pregnant with a child, which if born alive, may be born out of wedlock, or who has been delivered of a child born out of wedlock and who was not living with nor cohabiting with her husband during the period of time in which the child could have been conceived, may appear before the Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court and accuse a man of being the father of her child and request his arrest. In case of death, disability, or incompetence of the mother, the complaint may be made by the custodian, guardian, or next friend of the child. The complainant shall be examined under oath by the Corporation Counsel or his assistant to determine the validity of the accusation. If, upon examination, there appears reasonable cause to believe that the accused person is the father of the child in question, the complaint shall be reduced to writing, verified by the complainant, and filed with the clerk of the court. The verified complaint may be introduced in evidence to impeach the complaining witness in any subsequent proceedings therein. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-953 (Jan. 11, 1951, ch. 1225, § 5, 64 Stat. 1240).

The references Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court" and "Corporation Counsel or his assistant" are substituted for "Assistant Corporation Counsel at the juvenile court" and "Assistant Corporation Counsel", respectively, as more in conformity with Presidential Reorganization Plan No. 5, eff. July 1, 1952, and Reorganization Order No. 55-1029, June 6, 1955, as amended, of the Board of Commissioners. See, also, section 16-2341 herein, and revision note under section 11-1582 herein.

Changes are made in phraseology.

### § 16-2345. Apprehension of accused.

Upon the filing of a complaint pursuant to section 16-2344, the case shall be calendared forthwith for preliminary hearing. The clerk of the court shall issue a summons requiring the accused to appear in court on a day certain for that purpose, or, if deemed necessary by the court, a warrant for the arrest of the defendant may be issued, directed to the United States marshal or the Chief of Police or any other member of the Metropolitan Police Department of the District of Columbia, requiring the accused to be arrested and brought before the court. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-954 (Jan. 11, 1951, ch. 1225, § 6, 64 Stat. 1241), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 7, § 1, 3, Sept. 16, 1952.

"Chief of Police" is substituted for "Major and Superintendent" in conformity with section 4(b) of Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824,

which established the office of Chief of Police, and Reorg. Ord. No. 7, § 1, 3, Sept. 16, 1952, of the Board of Commissioners, which abolished the office of Major and Superintendent of the Metropolitan Police Department, and transferred the functions thereof to the Chief of Police. See section 16-2341 herein, and revision note thereunder. Changes are made in phraseology.

### § 16-2346. Bond—Commitment—Right to jury trial.

The court may require the person accused to enter into bond with surety in a sum not to exceed \$2,500, guaranteeing his appearance on the date set for hearing or trial. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied toward the support of the child if so ordered by the court. If the defendant fails to post bond fixed by the court he shall forthwith be committed to the District Jail, there to remain until the date set for hearing, or until he enters into the required bond or otherwise is discharged by due process of law. In all prosecutions under this subchapter, the defendant is entitled to, but may waive, trial by jury. A final hearing may not take place until after the birth of the child. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-955 (Jan. 11, 1951, ch. 1225, § 7, 64 Stat. 1241).

Changes are made in phraseology.

### § 16-2347. Blood tests.

When it is relevant to the prosecution or defense of an illegitimacy action, the court may direct that the mother, child, and the defendant submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child, but the results of the test may be admitted as evidence only in cases where the defendant does not object to its admissibility. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-956 (Jan. 11, 1951, ch. 1225, § 8, 64 Stat. 1241).

Changes are made in phraseology.

### § 16-2348. Exclusion of public.

Upon the trial of proceedings pursuant to this subchapter, the court may exclude the general public, and shall do so at the request of either party. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-957 (Jan. 11, 1951, ch. 1225, § 9, 64 Stat. 1241).

Minor changes are made in phraseology.

### § 16-2349. Judgment.

(a) *Prenatal and Confinement Expenses; Maintenance.*—When the defendant in a proceeding pursuant to this subchapter, in open court acknowledges the paternity of a child born out of wedlock, or when, at the trial the finding of the court or jury is against the defendant, the court, in rendering judgment, may enter an order for the payment of the prenatal medical care and costs of the mother's confinement and expenses of childbirth in such amount or amounts as it deems reasonable, commensurate with defendant's ability to pay. The court may also order payments for the maintenance and



education of the child, commensurate with defendant's ability to pay, to be made at such periods or intervals as the court directs. The court may order payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia. Payments shall continue until the child reaches the age of 16 years, unless, prior thereto, the child is legally adopted.

(b) *Petition for Modification of Judgment; Hearing.*—From time to time, the court, after a hearing, may change or modify its order directing the amount that defendant shall pay for the maintenance and support of the child. The hearing shall be held not less than ten days following notice in writing by the clerk of the court to the parties in interest, mailed to or left at their last known place of residence.

(c) *Death of Child.*—If a child dies before reaching the age of 16 years, the court upon proof thereof, may order the payment of reasonable funeral expenses, and shall terminate the order for maintenance. Arrears that may be owing at the time of death may be canceled. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-958 (Jan. 11, 1951, ch. 1225, § 10, 64 Stat. 1241).

Words "in its discretion" and "in the discretion of the court", are omitted from subsec. (a) and subsec. (c) as surplusage. Any abuse of discretion would render the court's action subject to reversal.

Changes are made in phraseology.

#### § 16-2350. Support payments.

(a) *Security; Probation; Commitment for Default.*—The court may require a defendant, against whom a judgment is rendered pursuant to this subchapter, to give security not to exceed \$2,500 guaranteeing payments ordered by the court, or may suspend the requirement of security and place the defendant on probation to the court on condition that payments be made as ordered. In default of a payment as ordered, the court may revoke probation and commit the defendant to jail for a period of not more than one year at any one time. At the expiration of a term of commitment, the court may discharge the defendant, but his liability to make subsequent payments or any payments in arrears at the time of commitment in accordance with the judgment or for commitment for further default is not thereby affected. In lieu of commitment or as a condition of his release from jail, the court may set aside commitment and again place the defendant on probation upon such terms as it directs. The amount of security, if forfeited, shall be disbursed as the court directs.

(b) *Judgment for Arrears; Execution.*—If there is a default of payments as ordered, the court, after notice by registered mail to the defendant at his last-known address, and after hearing, may reduce the amount of arrears to judgment. The court, after the notice and hearing, may reduce to judgment the arrears under any order hereafter entered for the support and maintenance of a child born out of wedlock, or any amounts ordered to be paid by the defendant under this subchapter. When the judgment is docketed in the clerk's office of the United States District Court for the District of

Columbia, it has the same force and effect as judgments of that court, and execution thereon may be effected in the same manner as upon judgments of that court. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-959 (Jan. 11, 1951, ch. 1225, § 11, 64 Stat. 1242).

All references to "discretion" of the court are omitted as surplusage. See revision note under section 16-2349.

In third sentence of subsec. (a), words "at time of commitment" are inserted after "arrears" on recommendation of the Judge of the Juvenile Court.

Changes are made in phraseology.

#### § 16-2351. Voluntary agreement for support—Approval—Order of court—Exclusion of other remedies.

The putative father of a child born out of wedlock may enter into an agreement with the mother of the child, or with another person on behalf of the child, for the support and maintenance of the child, and the agreement may be submitted to the court for ratification and approval. Upon ratification and approval, the court shall issue an order incorporating the terms thereof, and payments thereunder may be received and disbursed by the court in the same manner as provided by section 16-2381. The faithful performance under the terms of the agreement bars other remedies of the mother or any other person on behalf of the child for the support of the child, subject to section 16-2349(b). (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-960 (Jan. 11, 1951, ch. 1225, § 12, 64 Stat. 1242).

Changes are made in phraseology. See additional changes in text.

#### § 16-2352. Death of defendant—Liability of estate.

If the defendant dies after paternity has been established and prior to the time the child reaches the age of 16 years, any sums due and unpaid under an order of the court at the time of his death constitute a valid claim against his estate. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-962 (Jan. 11, 1951, ch. 1225, § 14, 64 Stat. 1243).

Changes are made in phraseology.

#### § 16-2353. New birth record upon marriage of natural parents.

When a certified copy of a marriage certificate is submitted to the Director of Public Health, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child and the paternity of the child has been judicially determined or acknowledged by the husband before the Commissioners or their designated agent, or has been acknowledged in an affidavit sworn to by the husband before a judge or the clerk of a court of record, or before an officer of the Armed Forces of the United States authorized to administer oaths, or before a person authorized to administer oaths, and the affidavit is delivered to the Commissioners or their designated agent, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth



then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal, and opened for inspection only upon order of the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-963 (Jan. 11, 1951, ch. 1225, § 15, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85-382, § 1, 72 Stat. 97).

"Director of Public Health" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16-2341 herein and revision note thereunder.

Minor changes are made in phraseology.

#### § 16-2354. Reports to Director of Public Health.

(a) Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the Director of Public Health, or his authorized representative in the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of the child.

(b) Upon receipt of the certificate provided by subsection (a) of this section, the Director of Public Health or his authorized representative shall file it with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-964 (Jan. 11, 1961, ch. 1225, § 16, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85-382, § 2, 72 Stat. 97).

Words "Director of Public Health, or his authorized representative in the jurisdiction" are substituted for "bureau of vital statistics of the jurisdiction", and "Director of Public Health or his authorized representative" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16-2341 herein and revision note thereunder.

Minor changes are made in phraseology.

#### § 16-2355. Applicability of sections relating to desertion or nonsupport.

The provisions of sections 22-903 to 22-905, making it a misdemeanor to abandon or willfully neglect to provide for the support and maintenance of minor children in destitute or necessitous circumstances, and providing the proceedings and punishment therefor, also apply to a person who abandons or fails to support his illegitimate child when paternity has been established judicially or when paternity has been directly acknowledged by the putative father under oath, or indirectly acknowledged by voluntarily making contributions to the support of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-961 (Jan. 11, 1951, ch. 1255, § 13, 64 Stat. 1242).

Section is based on subsec. (b) of section 11-961 of D.C. Code, 1961 ed. Remainder of section 11-961 is carried into sections 11-1556 and 16-2381.

Section "22-905" is substituted for "22-906", to correct a typographical error. Section 13 of act Jan. 11, 1951, ch. 1255, 64 Stat. 1242, from which section 11-961 of D.C. Code, 1961 ed., was derived, refers only to act Mar. 23, 1906, ch. 1131, 34 Stat. 86, as amended, which is classified to sections 22-903 to 22-905 of D.C. Code, 1961 ed. Sec-

tion 22-906 is from an act of 1910 (May 18, 1910, ch. 248, 36 Stat. 403), and relates to deposits by the clerk of the Juvenile Court of all moneys paid by order of the court under sections 22-903 to 22-905 that are collected and disbursed by the clerk. It seems unnecessary to include section 22-906 in the reference in this section.

Words, "and providing the proceedings and punishment therefor," are inserted for the purpose of completeness.

Minor changes are made in phraseology.

#### § 16-2356. Construction.

Section 11-1555, section 11-1583(a)(2), section 11-1586(e), and this subchapter shall be so interpreted as to effectuate the protection and welfare of the child involved in any proceedings thereunder. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-966 (Jan. 11, 1951, ch. 1225, § 18, 64 Stat. 1243).

The provision that authorized appropriations to carry out the purposes of the sections cited in section 11-966 of D.C. Code, 1961 ed., is omitted as covered in a separate section of the bill to enact this revision.

The citation of sections 11-951 to 11-967 of D.C. Code, 1961 ed., is changed to refer to this subchapter and other sections in this revised part in which the pertinent provisions of sections 11-951 to 11-967 are carried.

A minor change is made in phraseology.

### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

#### § 16-2381. Payments for support and maintenance under section 22-903 to 22-905—Voluntary payments—Disbursement.

(a) In all cases arising pursuant to sections 22-903 to 22-905, that, pursuant to section 11-1556, are brought in the Juvenile Court of the District of Columbia, the court may order payments to be made by the defendant, including a defendant to which section 16-2355 relates, at a precinct of the Metropolitan Police Department of the District of Columbia. As used in this subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section 16-2341.

(b) The Juvenile Court may accept voluntary payments for the support and maintenance of wife or minor children and disburse the moneys to the persons for whom the contributions are paid, in the same manner as the payments are accepted and disbursed pursuant to sections 22-903 to 22-905. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-961 (Jan. 11, 1951 ch. 1225, § 13, 64 Stat. 1242).

Section is based on part of subsec. (a) and all of subsec. (c), of section 11-961 of D.C. Code, 1961 ed. The provision of subsec. (a) of section 11-961 vesting jurisdiction in the Juvenile Court, concurrently with the District Court, of cases arising under sections 22-903 et seq., of the Code, relating to desertion and nonsupport, is carried into section 11-1566 herein. Subsec. (b) of section 11-961 is carried into section 16-2355 herein.

As some of the provisions of section 11-961 of D.C. Code 1961 ed., are, as stated above, carried into sections 11-1556 and 16-2355 herein, words "which, under section 11-1556, are brought in the Juvenile Court of the District of Columbia," are inserted near the beginning of subsec. (a), and words "including a defendant to which section 16-2355 relates," are inserted after "defendant" in that subsection, for the purpose of clarification and completeness.

The second sentence of subsec. (a) providing that, as used in that subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section



16-2341, is inserted for the same reason as stated in the revision note under section 16-2341.

The citation to section "22-906" of the Code, is changed to section "22-905" to correct a typographical error. See revision note under section 16-2355 herein.

Words "in its discretion," which, in the provisions carried into subsec. (a), followed "the court" and preceded "may order", are omitted as surplusage. See revision note under section 16-2349.

Changes are made in phraseology.

#### § 16-2382. Jury.

The jury for service in the Juvenile Court shall consist of twelve persons. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-936 (Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Section is based on the first clause of section 11-936 of D.C. Code, 1961 ed. For remainder of section 11-936, see tables.

#### § 16-2383. Suspension of imposition or execution of sentence.

In all cases in the Juvenile Court, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, if it appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation as provided by section 16-2314, 22-903, or 31-207, as the case may be. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-942a (June 18, 1953, ch. 128, § 1, 67 Stat. 65).

The provisions from which section 11-942a of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11-757 thereof because they referred, not only to the Juvenile Court, but also to the Municipal Court, now the Court of General Sessions. In this section, the provisions relating to the Court of General Sessions are omitted, as they are set out in section 16-710 herein.

Changes are made in phraseology.

##### CROSS REFERENCE

Probation and suspension of sentences in United States District Court, see U.S. Code, Title 18, § 3651.

#### § 16-2384. Fees prohibited.

A fee may not be charged for any service rendered by the clerk of the Juvenile Court or by any officer of the court. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-935 (Mar. 19, 1906, ch. 960, § 34, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Minor changes are made in phraseology.

### Chapter 25.—CHANGE OF NAME

Sec.

16-2501. Application—Persons who may file.

16-2502. Notice—Contents.

16-2503. Decree.

#### § 16-2501. Application—Persons who may file.

Whoever, being a resident of the District and desiring a change of name, may file an application in the United States District Court for the District

of Columbia setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1101 (Mar. 3, 1901, ch. 854 § 1298, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "holding an equity term", which followed the reference to the District Court, are omitted as obsolete. See revision note under section 11-502 herein.

The third (final) sentence of section 16-1101 of D.C. Code, 1961 ed., read as follows: "The Court shall have power, in its discretion, to grant the prayer of such petition". This sentence is omitted as covered by section 16-2503 herein.

Reference to "petition" are changed to "application", as the latter term is perhaps more in consonance with the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to change of name proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Changes are made in phraseology.

##### CROSS REFERENCE

Change of name upon adoption, see § 16-312.

#### § 16-2502. Notice—Contents.

Prior to a hearing pursuant to this chapter, notice of the filing of the application, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in a newspaper in general circulation published in the District. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1102 (Mar. 3, 1901, ch. 854, § 1299, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Word "application" is substituted for "petition". See revision note under section 16-2502 herein.

Changes are made in phraseology.

#### § 16-2503. Decree.

On proof of the notice prescribed by section 16-2502, and upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1103 (Mar. 3, 1901, ch. 854; § 1300, 31 Stat. 1394; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991, May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "or the judge holding an equity term thereof", which followed "court", are omitted as obsolete. See revision note under section 11-502 herein.

Word "application" is substituted for "petition". See revision note under section 16-2501 herein.

Changes are made in phraseology.

### Chapter 27.—NEGLIGENCE CAUSING DEATH

Sec.

16-2701. Liability—Damages—Prior recovery as precluding action.

16-2702. Party plaintiff—Statute of limitations.

16-2703. Distribution of damages.

#### § 16-2701. Liability—Damages—Prior recovery as precluding action.

When, by an injury done or happening within the limits of the District, the death of a person is caused

by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the United States Court of Appeals for the District of Columbia Circuit, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1201 (Mar. 3, 1901, ch. 854, § 1301, 31 Stat. 1394; June 19, 1948, ch. 507, § 1, 62 Stat. 487).

Word "judge" is substituted for "justice". See sections 88, 132, and 133 of Title 28, United States Code, and act June 25, 1948, ch. 646, § 32(a), 62 Stat. 991, as amended by act May 24, 1949, ch. 139. § 127, 63 Stat. 107.

Changes are made in phraseology.

#### CROSS REFERENCES

Abatement and revivor in general, see § 12-101 et seq.  
Liability for death of employee under Longshoremen's and Harbor Workers' Compensation Act, see §§ 36-501, 36-502.

Liability of common carrier for death of employee, Employers' Liability Act, see § 44-401 et seq.

#### § 16-2702. Party plaintiff—Statute of limitations.

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within one year after the death of the person injured. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1202 (Mar. 3, 1901, ch. 854, § 1302, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Changes are made in phraseology.

#### § 16-2703. Distribution of damages.

The damages recovered in an action pursuant to this chapter, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, may not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of an allocation, according to the provisions of the statute

of distribution in force in the District. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1203 (Mar. 3, 1901, ch. 854, § 1303, 31 Stat. 1395; June 19, 1948, ch. 507, § 2, 62 Stat. 487).

Minor changes are made in phraseology.

#### CROSS REFERENCES

Hospital lien on proceeds, see § 38-301.

Law of descents, see § 18-101 et seq.

### Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

#### SUBCHAPTER I.—PARTITION GENERALLY

Sec.

16-2901. Parties—Accounting by tenant in common.

#### SUBCHAPTER II.—ASSIGNMENT OF DOWER—PARTIES TO PARTITION PROCEEDINGS—SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

16-2921. Appointment of commissioners—Cases of partition.

16-2922. Widow or widower of tenant in common.

16-2923. Wife or husband as a party to partition proceeding.

16-2924. Sale of land encumbered by dower—lack of widow's or widower's consent—Written consent—Portion of proceeds.

16-2925. Sale of indivisible property—Discharged from dower or intestate share.

#### SUBCHAPTER I.—PARTITION GENERALLY

§ 16-2901. Parties—Accounting by tenant in common.

The United States District Court for the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b) This section applies to cases where:

(1) all the parties are of full age;

(2) all the parties are infants;

(3) some of the parties are of full age and some are infants;

(4) some or all of the parties are non compos mentis; and

(5) all or any of the parties are non-residents—and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect section 21-213. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1301 (Mar. 3, 1901, ch. 854, § 93, 31 Stat. 1203; June 30, 1902, ch. 1329, 32 Stat. 523).

Reference to "coparcener", which followed the reference to "joint tenant", is omitted from subsec. (a) of this section, as there are no estates in coparcenary in the District of Columbia. See section 45-817 of D.C. Code, 1931 ed.

"United States District Court for the District of Columbia" is substituted for "equity court", as the latter term is obsolete. See revision note under section 11-502 herein.

The term "real property" is substituted for "lands, tenements, or hereditaments" in conformity with modern usage.

The term "complaint" is substituted for "bill or petition", in view of rule 2 of the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to partition proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Subsec. (d) is added for the purpose of clarification. Both section 21-213, referred to therein, and section 16-1301 of D.C. Code, 1961 ed., on which this revised section is based, are derived from section 93 of act Mar. 3, 1901, ch. 854, cited above. Probably, the provisions should be read together.

Changes are made in phraseology and arrangement.

## CROSS REFERENCES

Dower rights, see § 18-201 et seq.

Estates in coparcenary abolished, see § 45-817.

## SUBCHAPTER II.—ASSIGNMENT OF DOWER— PARTIES TO PARTITION PROCEEDING—SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

### § 16-2921. Appointment of commissioners—Cases of partition.

When real property is held by a person or persons, by descent or purchase, in the whole of which a widow or widower is entitled to dower, either the widow or widower or a person entitled to the property or an undivided share therein may apply to the United States District Court for the District of Columbia to have the dower therein assigned. Thereupon, the court shall appoint three commissioners to lay off and assign the dower, if practicable. The report of the commissioners is subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real property, in the whole or which a widow or widower is entitled to dower, the dower shall be laid off and assigned, in like manner, before the partition is decreed. When an estate of which a woman or man is dowable is entire, and the dower can not be set off therefrom by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1302 (Mar. 3, 1901, ch. 854, § 86, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, to conform with act Sept. 14, 1961, Pub. L. 87-246, § 3, 75 Stat. 515 (D.C. Code, 1961 ed., § 18-201a), which restored the wife's right of dower (previously abolished by act Aug. 31, 1957, Pub. L. 85-244, § 3, 71 Stat. 560, with respect to persons who intermarried on or after Nov. 29, 1957), and created a statutory right of dower in both wives

and husbands. It provided further that all laws relating to dower and its incidents should, on and after March 15, 1962 (effective date of the act), be construed to be applicable to both husband and wife.

Changes are made in phraseology.

## CROSS REFERENCES

Release of dower, see § 30-216.

Release of dower of a person non compos mentis, see § 21-301.

### § 16-2922. Widow or widower of tenant in common.

When a widow or widower of a tenant in common of real property is entitled to dower in his or her undivided share of the property, and a partition is decreed between his or her heirs or devisees and the other tenants in common, the dower attaches to, and may, in the manner provided by section 16-2921, be assigned and laid out in, the shares assigned in severalty to the heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from the dower. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1951 ed., § 16-1303 (Mar. 3, 1901, ch. 854, § 87, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16-2921 herein.

Changes are made in phraseology.

### § 16-2923. Wife or husband as party to partition proceeding.

On an application to the District Court to decree a partition of real property between tenants in common, it shall not be necessary to make the wife or husband of any of the persons a party to the proceedings, but the right of dower, or the wife's or husband's intestate share, as the case may be, shall attach to whatever part of the property is assigned in severalty to the wife or husband, and the other parts thereof shall be assigned free of the right of dower or intestate share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1951 ed., § 16-1304 (Mar. 3, 1901, ch. 854, § 88, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16-2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18-101, 18-201a, 18-204, 18-210, 18-211, 18-212, 18-215a.

Changes are made in phraseology.

### § 16-2924. Sale of land encumbered by dower—Lack of widow's or widower's consent—Written consent—Portion of proceeds.

When a decree is rendered for the sale of real property, in the whole of which a widow or widower is entitled to dower, if she or he will not consent to a sale of the property free of the dower, the District Court may, if it appears advantageous to the parties, cause the dower to be laid off and assigned as provided by this subchapter. If she or he will consent in writing to the sale of the property free of the dower, the court shall order that it be sold free of the dower, and shall allow her or him, in commutation of the dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth,



according to the age, health, and condition of the widow or widower. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1951 ed., § 16-1305 (Mar. 3, 1901, ch. 854, § 89, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16-2921 herein.

Minor changes are made in phraseology.

#### § 16-2925. Sale of indivisible property—Discharge from dower or intestate share.

When real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the property is incapable of being divided between them in specie, the District Court may decree a sale of the property free and discharged from any right of dower or from any intestate share of the wife or husband, as the case may be, of any of the parties in her or his undivided share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241 § 1.)

#### REVISION NOTES

Based on D.C. Code, 1951 ed., § 16-1306 (Mar. 3, 1901, ch. 854, § 90, 31 Stat. 1203).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16-2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18-101, 18-120a, 18-204, 18-210, 18-211, 18-212, 18-215a.

Changes are made in phraseology.

### Chapter 31.—PROBATE COURT PROCEEDINGS

Sec.

- 16-3101. Definition.
- 16-3102. Settlement of accounts as prima facie evidence only.
- 16-3103. Summons—Failure to appear or give evidence.
- 16-3104. Sequestration where person fails to appear.
- 16-3105. Plenary proceeding—Refusal to answer as required.
- 16-3106. Issues to be made up in plenary proceeding—Jury—Compelling payment of costs.
- 16-3107. Enforcement of judgments, orders and decrees—Application of property sequestered.
- 16-3108. Ordering investment of funds—Revocation of letters for noncompliance.
- 16-3109. Compelling performance of duties by executors, administrators, etc.—Revocation of letters.
- 16-3110. Accounting and delivering of property after revocation of letters—Compelling performance.
- 16-3111. Order admitting will to probate as conclusive evidence.
- 16-3112. Arbitration—Exceptions.
- 16-3113. Costs and execution.

#### § 16-3101. Definition.

As used in this chapter, "Probate Court" means the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Section is new, but states no new law, and is inserted for the purpose of clarification and completeness. See section 11-522 herein, particularly subsec. (d) thereof.

#### § 16-3102. Settlement of accounts as prima facie evidence only.

Except as provided by section 16-3112, in actions:

- (1) for an accounting, by legatees or next to kin against executors or administrators, or wards against their guardians; or

- (2) to subject the real estate of decedents to the payment of their debts, by creditors against executors or administrators, or against heirs or devisees—

a prior settlement of accounts in the Probate Court is only prima facie evidence as to the correctness of the accounts. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-504 (Mar. 3, 1901, ch. 854, § 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525).

Section is based on part of section 11-504 of D.C. Code, 1961 ed. For remainder of section 11-504, see tables.

Changes are made in phraseology and arrangement.

#### § 16-3103. Summons—Failure to appear or give evidence.

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper, on the return of the "summoned", and failure of the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or it may have his estate, or a part thereof attached and sequestered as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-506 (Act of Maryland, 1798, ch. 101, subch. 15, § 13; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision empowering the probate court to issue the summons referred to is omitted as covered by section 1651 of Title 28, United States Code. That section provides that the Supreme Court of the United States "and all courts established by Act of Congress" may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

As alternatives to the methods of enforcement provided for in this section, section 11-506 of D.C. Code, 1961 ed., provided (1) that the probate court might, on return of the "summoned", and failure of the party to appear, issue an attachment, and, when he appeared or was brought in, fine him a maximum of \$30; and (2) that if a witness before the court refused to give evidence, the court might commit him to the custody of the marshal or coroner "(if the case may require)", there to remain until he gave evidence, or was discharged according to law. These provisions are omitted as covered by provisions in Title 28, United States Code. The United States District Court for the District of Columbia, which in the exercise of its probate jurisdiction, is known as the Probate Court (see section 11-522 herein), has been, since the enactment of Title 28, United States Code, into law, in 1948, a United States district court, and has the same powers as those of other district courts. See sections 88 and 132 of that title. It is included within the definition of "court of the United States" (as used in that title) contained in section 451 of that title. Section 401 of Title 18, United States Code, which title was also enacted into law in 1948, provides for contempt powers of a "court of the United States", and while the term is not defined in that title, the bills to enact Titles 18 and 28 of that Code into law were companion bills. They were approved on the same date and became effective on the same date, and, considering the changed status of the United States District Court for the District of Columbia since the enactment of Title 28, the term



"court of the United States", as used in Title 18, embraces that court. Therefore, section 401 of Title 18, United States Code, and the above cited section 1651 of Title 28 thereof, cover or supersede the above-mentioned provisions relating to attachment of the person and punishment for contempt, which, as stated, are omitted. However, for the purpose of clarification and completeness, words "may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are inserted.

Changes are made in phraseology.

#### § 16-3104. Sequestration where person fails to appear.

(a) If two summonses issued to a person by the Probate Court are regularly returned non est by the United States marshal and it is necessary to proceed further to compel the person's attendance, the court may order and issue an attachment against his real and personal property. On return of the attachment, to which a schedule of the attached property, if any, shall be annexed, the court, by order, or commission under seal, may authorize a person or persons to take into his or their care and custody the property returned in the schedule, or a part thereof, and receive the profits thereof, to be accounted for, until the person summoned appears and obeys the order of the court, or until further order. If the marshal or other officer does not deliver the property accordingly, he is liable to be proceeded against as provided by this subsection.

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond to the United States with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) When the purpose for which property sequestered under this section is answered, the court shall direct that the estate or property, and the profits, after making the deductions authorized by subsection (b) of this section, be restored to the person from whom the care and custody of the property were taken. When the person is dead, the court shall order the property to be delivered to his heirs, devisees or legal representatives, as soon as the purpose of the sequestration is answered, or immediately, on application, and on satisfying the court of the person's right, if the purpose, after the death of the original person, can not be answered. (Dec. 23, 1963, 77 Stat. 599; Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-508 (Act of Maryland, 1798, ch. 101, subch. 15, § 15; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology and arrangement.

#### § 16-3105. Plenary proceeding—Refusal to answer as required.

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmation. If

the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or it may have his property attached and sequestered as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-509 (Act of Maryland, 1798, ch. 191, subch. 15, § 16; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "the Court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are substituted for "the said party may be attached, fined, and committed". See revision note under section 16-3103 herein.

Changes are made in phraseology.

#### § 16-3106. Issues to be made up in plenary proceeding—Jury—Compelling payment of costs.

In a plenary proceeding provided for by section 16-3105, the Probate Court shall give judgment, or decree upon the bill an answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or by attachment and sequestration of the property as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-510 (Act of Maryland, 1798, ch. 101, subch. 15, § 17; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "by exercising its powers of enforcement and punishment as provided in section 401 of Title, United States Code", are substituted for "by attachment of the body, and fine,". See revision note under section 16-3103 herein.

Changes are made in phraseology.

#### § 16-3107. Enforcement of judgments, orders and decrees—Application of property sequestered.

The Probate Court may enforce its judgments, orders, decrees, and decisions in the manner provided by sections 16-3103 and 16-3104. When a judgment, order, decree, or decision is for the payment of money, the court may apply the property sequestered to the purpose for which the judgment, order, decree, or decision is given. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-512 (Act of Maryland, 1798, ch. 101, subch. 15, § 20; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision at the beginning of section 11-512 of D.C. Code, 1961 ed., "The probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this Code", is omitted as obsolete, or, in any event, unnecessary. See revision note under section 11-502 herein. There are no longer statutory special terms of the District Court designated as probate court, equity court, etc., and there is no more reason to enact such a provision as this, with respect to the District Court in the exercise of its probate jurisdiction and powers (see section 11-522 herein), than there would be to enact similar provisions with respect to its other jurisdiction.

Words "at the discretion of the court," which related to the Court's application of the property sequestered



to the purpose for which the judgment, order, etc., is given, are omitted as surplusage. See revision note under section 16-2349 herein.

Changes are made in phraseology.

**§ 16-3108. Ordering investment of funds—Revocation of letters for noncompliance.**

The Probate Court may order an executor, administrator, collector, or guardian, whom it has appointed, to bring into court or invest in securities, to be approved by the court, any funds received by the executor, administrator, collector, or guardian. If the party does not, within a reasonable time, to be fixed by the court, comply with the order, the court may revoke his letters. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-513 (Mar. 3, 1901, ch. 854, § 123, 31 Stat. 1209).

Changes are made in phraseology.

**CROSS REFERENCE**

Investments of funds held by direction of will, see § 20-115.

**§ 16-3109. Compelling performance of duties by executors, administrators, etc.—Revocation of letters.**

The Probate Court may order an executor, administrator, collector, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of an inventory or account or the fulfillment of a duty in the court, to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act. On his appearance, the court may make such order as is just. On his failure to appear, after having been duly summoned, the court may revoke his power to act and make such further order and other appointment as justice requires. If the summons to appear is returned by the marshal "not to be found," an alias summons shall be mailed to the last-known post-office address of the fiduciary or served upon his attorney of record, if he is within the jurisdiction of the court. On the failure of the fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice requires. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-514 (Mar. 3, 1901, ch. 854, § 126, 31 Stat. 1210; Apr. 19, 1920, ch. 153, 41 Stat. 557).

Changes are made in phraseology.

**§ 16-3110. Accounting and delivering of property after revocation of letters—Compelling performance.**

When the Probate Court revokes letters testamentary or of administration, collection, or guardianship, the party whose letters are revoked shall render forthwith an account of his administration or guardianship up to the period of the rendition of the account and deliver and turn over to the person appointed in his place all the estate, money, and effects remaining in his hands that were received and held by him by virtue of his appointment so revoked. All moneys in the hands of an executor, administrator, or collector realized by him by the sale of the specific property are unadministered assets and shall be turned over in like manner. The court

may direct the bond of the executor, administrator, or collector whose letters are revoked to be put in suit for the use of the new administrator or collector appointed in his place. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-515 (Mar. 3, 1901, ch. 854, § 127, 31 Stat. 1210).

The provision in section 11-515 of D.C. Code, 1961 ed., that, with respect to the duties prescribed in this section, empowered the court to "compel the performance of said duty in the manner hereinafter mentioned", is omitted as unnecessary and covered by section 401 of Title 18, United States Code. See revision note under section 16-3103 herein. As set out in chapter 5 of Title 11 of D.C. Code, 1961 ed., the only section in that chapter, or in the 1901 act, to which the above-quoted words in section 11-515 of D.C. Code, 1961 ed., "in the manner hereinafter mentioned", apparently could have related, was section 11-516 thereof (section 129 of the 1901 act, as amended by act June 30, 1902, ch. 1329, 32 Stat. 526), which provided that "The said court [Probate Court], in addition to the powers herein specially conferred, shall have power to enforce its judgments, orders and decrees in like manner as orders and decrees may be enforced in the equity court", and that section is omitted from this revision as obsolete. See revision note under section 11-502 herein.

Changes are made in phraseology.

**CROSS REFERENCE**

Distribution before discovery of will or before will is declared invalid, see § 20-106.

**§ 16-3111. Order admitting will to probate as conclusive evidence.**

With respect to the trial of issues in the Probate Court, including the taking and use of testimony of non-resident witnesses, the Federal Rules of Civil Procedure, unless otherwise provided by law, are applicable thereto. A final order or decree admitting a will to probate, unless and until it is reversed, is conclusive evidence of the validity of the will in a collateral proceeding in which the will is brought into question, and a transcript of the record of the will, and of the decree admitting it to probate, is sufficient proof thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-519 (Mar. 1901, ch. 854, § 144, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526; June 7, 1934, ch. 426, 48 Stat. 926).

The first sentence is substituted for the first two sentences of section 11-519 of D.C. Code, 1961 ed., which at least in part are obsolete, and which read as follows: "The said court shall have authority to take the testimony of nonresident witnesses, and such depositions, as well as depositions de bene esse, taken according to law, may be read at the trial of any issue in said court. On the trial of any such issue exceptions may be taken to the rulings of the court, and the said court may set aside the verdict and grant a new trial for the same causes and in the same manner as in case of a trial in the United States Court of Appeals for the District of Columbia."

Regarding the above-quoted second sentence of section 11-519 of D.C. Code, 1961 ed., it is assumed that the substitution in the 1961 edition of the Code of the reference to the court of appeals for the former reference therein to the "Circuit Court", a former special term of the district court, at which "common-law" civil causes were heard, was merely a typographical error. See revision note under section 11-502 herein.

The Federal Rules of Civil Procedure are applicable to civil actions in the District of Columbia district court, and Rule 46 thereof abolished formal exceptions in the trial thereof.



The sentence substituted for the first two sentences of section 11-519 of D.C. Code, 1961 ed., brings the procedure more into harmony with that provided by the Federal Civil Rules for civil actions. However, the exception clause, "unless otherwise provided by law" is included, in recognition of other statutes relating to the trial of issues in probate matters. See, for example, section 19-312 of D.C. Code, 1961 ed.

Changes are made in phraseology.

#### § 16-3112. Arbitration—Exceptions.

The Probate Court may, with the consent in writing of both parties, arbitrate between a complainant and an executor or administrator, or between an executor or administrator and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of the arbitrator, and the court may confirm or overrule the award. The award when confirmed is conclusive between the parties. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-520 (Mar. 3, 1901, ch. 854, § 145, 31 Stat. 1215).

Minor changes are made in phraseology.

#### § 16-3113. Costs and execution.

The Probate Court may render judgment for costs against the unsuccessful party in any proceeding conducted in the court, and issue execution thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-518 (Mar. 3, 1901, ch. 854, § 143, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526).

Minor changes are made in phraseology.

##### CROSS REFERENCES

Fees and costs, see § 15-701 et seq.

### Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

#### Sec.

16-3301. Complaint—Allegations—Parties—Service—Decree.

#### § 16-3301. Complaint—Allegations—Parties—Service—Decree.

When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the United States District Court for the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to a decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b) In an action pursuant to this section, if process is returned not to be found, notice by publica-

tion may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is known whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13-341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1501 (Mar. 3, 1901, ch. 854, § 111, 31 Stat. 1207; June 30, 1902, ch. 1329, 32 Stat. 524; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "bill," and "plaintiff" is substituted for "complainant", in conformity with the Federal Rules of Civil Procedure. See rules 3 and 4 thereof.

Changes are made in phraseology and arrangement.

##### CROSS REFERENCES

Adverse possession as a defense, see § 16-1113.

Periods of limitation, see § 12-301.

### Chapter 35.—QUO WARRANTO

#### Sec.

- 16-3501. Persons against whom issued—Civil action.
- 16-3502. Parties who may institute—Ex rel. proceedings.
- 16-3503. Refusal of Attorney General or United States attorney to act—Procedure.
- 16-3504. Allegations in petition of relator claiming office.
- 16-3505. Notice to defendant.
- 16-3506. Proceedings on default.
- 16-3507. Pleading—Jury trial.
- 16-3508. Verdict and judgment.
- 16-3509. Usurping corporate franchise—Judgment.
- 16-3510. Proceedings against corporate directors and trustees—Judgment and order—Enforcement.
- 16-3511. Recovery of damages from usurper—Limitation.

#### § 16-3501. Persons against whom issued—Civil action.

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against—

(1) a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District corporate rights, privileges, or franchises not granted them by law in force in the District.

The proceedings shall be deemed a civil action. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1601 (Mar. 3, 1901, ch. 854, § 1538, 31 Stat. 1419; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

##### CROSS REFERENCE

Proceedings for a forfeiture of all rights and privileges of institutions or learning, see § 29-413.

### § 16-3502. Parties who may institute; ex rel. proceedings.

The Attorney General or the United States attorney may institute a proceeding pursuant to this chapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned for the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1602 (Mar. 3, 1901, ch. 854, § 1539, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

### § 16-3503. Refusal of Attorney General or United States attorney to act—Procedure.

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person, on his compliance with the condition prescribed by section 16-3502 as to security for costs. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1603 (Mar. 3, 1901, ch. 854, § 1540, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

### § 16-3504. Allegations in petition of relator claiming office.

When a quo warranto proceedings is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1604 (Mar. 3, 1901, ch. 854, § 1541, 31 Stat. 1420).

A minor change is made in phraseology.

### § 16-3505. Notice to defendant.

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant can not be found in the District, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1605 (Mar. 3, 1901, ch. 854, § 1542, 31 Stat. 1420; June 30, 1902, ch. 1329, 32 Stat. 544).

Minor changes are made in phraseology.

### § 16-3506. Proceedings on default.

If the defendant does not appear as required by a writ of quo warranto, after being personally served, the court may proceed to hear proof in support of the writ, and render judgment accordingly. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1606 (Mar. 3, 1901, ch. 854, § 1543, 31 Stat. 1420).

Minor changes are made in phraseology.

### § 16-3507. Pleading—Jury trial.

In a quo warranto proceeding, the defendant may demur or plead specially or plead "not guilty" as the general issue, and the United States may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1607 (Mar. 3, 1901, ch. 854, § 1544, 31 Stat. 1420).

Minor changes are made in phraseology.

### § 16-3508. Verdict and judgment.

Where a defendant in a quo warranto proceeding is found by the jury to have usurped or intruded into or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1608 (Mar. 3, 1901, ch. 854, § 1545, 31 Stat. 1420).

Minor changes are made in phraseology.

### § 16-3509. Usurping corporate franchise—Judgment.

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1609 (Mar. 3, 1901, ch. 854, § 1546, 31 Stat. 1420).

A minor change is made in phraseology.

### § 16-3510. Proceedings against corporate directors and trustees—Judgment and order—Enforcement.

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers



or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1610 (Mar. 3, 1901, ch. 854, § 1547, 31 Stat. 1420).

Reference to court order is substituted for reference to mandamus, in conformity with the Federal Rules of Civil Procedure. Rule 81(b) thereof abolished the writ of mandamus and provides that the relief theretofore available under mandamus may be obtained by appropriate action or motion under the practice prescribed in those rules.

Changes are made in phraseology.

### § 16-3511. Recovery of damages from usurper—Limitation.

At any time within a year after a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1611 (Mar. 3, 1901, ch. 854, § 1548, 31 Stat. 1421).

Changes are made in phraseology.

## Chapter 37.—REPLEVIN

### SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 16-3701. Demand prior to action—Costs.
- 16-3702. Form of complaint.
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### SUBCHAPTER II.—REPLEVIN IN COURT OF GENERAL SESSIONS

- 16-3731. Jurisdiction—Form of complaint.
- 16-3732. Affidavit—Contents.
- 16-3733. Undertaking to abide judgment of the court.
- 16-3734. Failure of officer to obtain possession.
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- 16-3736. Default.
- 16-3737. Retention of property by marshal—Sufficiency of undertaking, quashing writ, and return of property.
- 16-3738. Motion for return of property—Procedure—Objection to sufficiency of security.
- 16-3739. Determination and measure of plaintiff's damages.
- 16-3740. Judgment for defendant and determination of damages.

### SUBCHAPTER I.—GENERAL PROVISIONS

#### § 16-3701. Demand prior to action—Costs.

In an action of replevin brought to recover personal property to which the plaintiff is entitled, that is alleged to have been wrongfully taken by or to be in the possession of and wrongfully detained by the defendant, it is not necessary to demand possession of the property before bringing the action; but the costs of the action may be awarded as the court orders. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1801 (Mar. 3, 1901, ch. 854, § 1549, 31 Stat. 1421).

Changes are made in phraseology.

#### CROSS REFERENCES

Replevin,

Attachment suits, see § 16-517.

Court of General Sessions, see §§ 16-3731 to 16-3740.

#### § 16-3702. Form of complaint.

A complaint in replevin shall be in the following or equivalent form:

"The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) the plaintiff's goods and chattels, to wit: (describe them) of the value of ——— dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloined, that he may have judgment of their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1802 (Mar. 3, 1901, ch. 854, § 1550, 31 Stat. 1421).

Reference to "declaration" is changed to "complaint", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

A minor change is made in phraseology.

#### § 16-3703. Affidavit—Contents.

At the time of filing a complaint in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proopsed to be replevied, being the same described in the complaint;

(2) the defendant has seized and detained or detains the chattels; and

(3) the chattels were not subject to the seizure or detention and were not taken upon a writ of replevin between the parties.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1803 (Mar. 3, 1901, ch. 854, § 1551, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

#### § 16-3704. Undertaking to abide judgment of the court.

At the time of filing a complaint in replevin, the plaintiff shall enter into an undertaking by himself or his agent with surety, approved by the clerk, to

abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1804 (Mar. 3, 1901, ch. 854, § 1552, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

#### CROSS REFERENCE

General provision concerning bonds, see § 28-2401 et seq.

### § 16-3705. Failure of officer to obtain possession—Procedure.

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for detention, or he may renew the writ in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1805 (Mar. 3, 1901, ch. 854, § 1553, 31 Stat. 1421).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Words "notice to plead," which related, also, to service, are omitted as covered by the word "summons". See rule 4(b) of the Federal Rules of Civil Procedure.

Reference to "affidavit" is inserted, in view of section 16-3703 herein. See, also, section 11-726 of D.C. Code, 1961 ed., which related to replevin in the Municipal Court (now the Court of General Sessions), and which is carried into section 11-3734 herein.

Minor changes are made in phraseology.

#### CROSS REFERENCE

Replevin in attachment proceedings, see § 16-517.

### § 16-3706. Publication against defendant.

When the officer's return of a writ of replevin is that he has taken possession of the goods and chattels sued for, but indicates that personal service on the defendant could not be made, the court, subject to the provisions of section 13-340 as to mailing notice, may order that the defendant appear to the action by a fixed day. The plaintiff shall cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1806 (Mar. 3, 1901, ch. 854, § 1554, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

### § 16-3707. Default.

If, after notice as provided by section 16-3706, the defendant fails to appear, the court may proceed as in case of default after personal service. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1807 (Mar. 3, 1901, ch. 854, § 1555, 31 Stat. 1421).

Changes are made in phraseology.

### § 16-3708. Motion for return of property—Procedure—Objection to sufficiency of security.

(a) On the taking possession of the goods and chattels by the marshal by virtue of a writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession. Thereupon, the court may inquire into the circumstances and manner of the defendant's obtaining possession of the property, and, if it seems just, may order the property to be returned to the possession of the defendant, to abide the final judgment in the action. The court may require the defendant to enter into an undertaking with surety or sureties, similar to that required of the plaintiff upon the commencement of the action. In such case, the court shall render judgment against the surety or sureties, as well as against the defendant.

(b) When it appears that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return of the property to the possession of the defendant. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking of the plaintiff, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1809 (Mar. 3, 1901, ch. 854, § 1557, 31 Stat. 1422; June 30, 1902, ch. 1329, 32 Stat. 544; Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

The last sentence of section 16-1809 of D.C. Code, 1961 ed., which made that section applicable to the Municipal Court (now the Court of General Sessions), is omitted as covered by section 16-3738 herein.

Changes are made in phraseology and arrangement.

### § 16-3709. Notice to officer of intention to move for return—Duty of officer—Time of motion.

If the defendant in an action of replevin notifies the officer taking possession of the property, in writing, of his intention to make either of the motions specified by section 16-3708, the officer shall retain possession of the property until the motion is disposed of, if the motion is filed and notice given, as provided by section 16-3708, to the plaintiff or his attorney, within two days thereafter. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1810 (Mar. 3, 1901, ch. 854, § 1558, 31 Stat. 1422).

Changes are made in phraseology.

### § 16-3710. Determination and measure of plaintiff's damages.

Whether, in an action of replevin, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service or publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where jury trial had been waived or



there is no issue of fact, and the damages shall be the full value of the goods, if eloined by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and the judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1811 (Mar. 3, 1901, ch. 854, § 1559, 31 Stat. 1422).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue thereon joined is found against him, or his plea is held bad on demurrer,"; and words "jury trial had been waived or" are inserted after "or by a jury of inquest, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 7 (a), (c), 12, 38, 39, 41, 56, and 64 thereof. See, also, the latter part of rule 55(b)(2) thereof, which, with respect to default judgments entered by the court, provided that the amount of damages shall be determined by a jury if "required by any statute of the United States". Under rule 81(e) of those rules, section 1599 of the act of 1901, cited above, from which section 16-1811 of the D.C. Code, 1961 ed., was derived, and on which this section is based, is a "statute of the United States".

Changes are made in phraseology.

#### § 16-3711. Judgment for defendant and determination of damages.

When, in an action of replevin, the issue is found for the defendant, or the plaintiff dismisses or fails to presecute his suit, or judgment is rendered against the plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages for their detention, or, on failure, that the defendant recover against the plaintiff and his surety the damages sustained by him. The damages shall be assessed by the jury trying the issue; or, where jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or he dismisses or fails to prosecute his suit, by a jury of inquest. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1812 (Mar. 3, 1901, ch. 854, § 1560, 31 Stat. 1422).

Near the beginning, words "or judgment is rendered against the plaintiff on proper motion under rules of court," are inserted after "prosecute his suit,"; and, near the end, words "jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or" are inserted after "or, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 12, 38, 39, 41, 56, and 64 thereof.

Changes are made in phraseology.

#### § 16-3712. Verdict where goods are eloined.

If the defendant in an action of replevin has eloined the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1813 (Mar. 3, 1901, ch. 854, § 1561, 31 Stat. 1422).

Minor changes are made in phraseology.

#### § 16-3713. Judgment where goods are eloined.

The judgment in a case where the defendant has eloined the goods sued for, shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1814 (Mar. 3, 1901, ch. 854, § 1562, 31 Stat. 1422).

Changes are made in phraseology.

### SUBCHAPTER II.—REPLEVIN IN COURT OF GENERAL SESSIONS

#### § 16-3731. Jurisdiction—Form of complaint.

The District of Columbia Court of General Sessions may issue a writ of replevin when a plaintiff files a complaint in replevin, in the following or an equivalent form:

"The plaintiff sues the defendant for wrongfully taking and detaining (or wrongfully detaining) the plaintiff's, goods and chattels, to wit (here describe them), of the value of ——— dollars. And the plaintiff claims that the same may be taken and delivered to him, or, if they are eloined, that he may have judgment for their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-725, 11-751a, 11-755 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87-242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87-873, § 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 2, 77 Stat. 77, 78).

Section is based on the first part of section 11-725 of D.C. Code, 1961 ed. Remainder of section 11-725 is carried into sections 16-3732 and 16-3733 herein. Section 11-755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, with respect to the merger, by the act of 1942, of the Municipal Court of the District of Columbia and the Police Court, to form the Municipal Court for the District of Columbia, subsec. (a) of that section provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus established, and the judges thereof, should have and exercise the same powers and jurisdiction as were theretofore had and exercised by the former two courts, and the judges thereof. After the 1962 amendment, subsec. (a) of section 11-755 provided that the District of Columbia Court of General Sessions and the judges thereof should have and exercise the same powers and jurisdiction as were previously vested in the Municipal Court for the District of Columbia and the judges thereof.

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7(a) of the Civil Rules of the Court.

Changes are made in phraseology.

#### CROSS REFERENCE

Procedure, see § 13-101.



**§ 16-3732. Affidavits—Contents.**

At the time of filing a complaint pursuant to section 16-3731, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of the chattels described in the complaint;

(2) the defendant has seized and detains or detains the chattels;

(3) the chattels were not subject to the seizure or detention, and were not taken under a writ of replevin between the parties; and

(4) the chattels are not of the value of more than \$10,000.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11-725 of D.C. Code, 1961 ed. Remainder of section 11-725 is carried into sections 16-3731 and 16-3733 herein.

The term "complaint" is substituted for "declaration", in conformity with rules, 2, 3, and 7(a) of the Civil Rules of the Court.

In clause (4), "\$10,000" is substituted for "\$1,000", to conform the provision with the present civil jurisdiction of the Court of General Sessions. See section 11-961 herein.

Changes are made in phraseology and arrangement.

**§ 16-3733. Undertaking to abide judgment of the Court.**

At the time of filing a complaint pursuant to section 16-3731, the plaintiff shall enter into an undertaking, with surety approved by the court, submitting to the jurisdiction of the court, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11-725 of D.C. Code, 1961 ed. Remainder of section 11-725 is carried into sections 16-3731 and 16-3733 herein.

Changes are made in phraseology.

**§ 16-3734. Failure of officer to obtain possession.**

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for the detention, not to exceed in all \$10,000 or he may renew the writ, in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-726 (Mar. 3, 1901, ch. 854, § 14, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7 of Civil Rules of the Court.

The maximum figure, with respect to prosecution, by the plaintiff, for the value of the property and damages for the detention, where the return indicates that the officer could not get possession of the goods and chattels,

is changed from "\$1,000" to "\$10,000", to conform the provision with section 11-961 herein, relating to civil jurisdiction of the Court of General Sessions.

Changes are made in phraseology.

**§ 16-3735. Publication against defendant.**

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court, subject to section 13-340 as to mailing notice, may order that the defendant appear to the action by a fixed day, and cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for defendant's appearance. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11-727 of D.C. Code, 1961 ed. Remainder of section 11-727 is carried into section 16-3736 herein.

Words "subject to section 13-340 as to mailing notice," are inserted, because there was nothing in section 13-111 of D.C. Code, 1961 ed., from which section 13-340 herein was derived, which indicated that that section did not also apply to civil actions in the Municipal Court (now the Court of General Sessions). See section 16-1806 of D.C. Code, 1961 ed., which is carried into section 16-3706 herein.

Changes are made in phraseology.

**§ 16-3736. Default.**

If, after notice as provided by section 16-3735, the defendant fails to appear, the court may proceed, as in the case of default after personal service, to render judgment for the property in favor of the plaintiff. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 11-727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11-727 of D.C. Code, 1961 ed. Remainder of section 11-727 is carried into section 16-3735 herein.

Changes are made in phraseology.

**§ 16-3737. Retention of property by marshal—Sufficiency of undertaking, quashing writ, and return of property.**

Property taken by the marshal under a writ of replevin issued pursuant to this subchapter shall be retained by him for three days, exclusive of Sundays and legal holidays, before delivering it to the plaintiff, in order that the defendant or other persons claiming an interest in the property may present objections to the court to the sufficiency of the security on the undertaking or the jurisdiction of the court. If the court deems the undertaking insufficient, it may direct the marshal to retain the property for a further short time, to be designated by the court, until an undertaking to be approved by it is filed, in default of which the marshal shall return the property to the person from whom it was taken. If it appears to the court that the property is of the value of over \$10,000, the court shall quash the writ of replevin and direct the property to be returned to the party out of whose possession it was taken. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-729 (Mar. 3, 1901, ch. 854, § 17, 31 Stat. 1192; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The amount of "\$1,000" is changed to "\$10,000". See section 11-961 herein.

Changes are made in phraseology.

### § 16-3738. Motion for return of property—Procedure—Objection to sufficiency of security.

Section 16-3708 is also applicable to actions of replevin brought pursuant to this subchapter. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-730 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

Changes are made in phraseology.

### § 16-3739. Determination and measure of plaintiff's damages.

Whether, in an action of replevin pursuant to this subchapter, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service, the plaintiff's damages shall be the full value of the goods, not to exceed \$10,000, if elained by the defendant, and damages for the detention thereof, and judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-731 (Mar. 3, 1901, ch. 854, § 18, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue joined be found against him, or his plea be held bad," for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules, 7, 12, 41, and 55 thereof. For jury trials in civil cases in the Court of General Sessions, waiver thereof, determination of damages in cases tried without a jury, etc., see section 13-502 herein, and rules 38 and 53 of the Civil Rules of the Court.

The amount of "\$1,000", with respect to maximum damages, is changed to "\$10,000", in view of the present civil jurisdiction of the Court of General Sessions. See section 11-961 herein.

Changes are made in phraseology.

### § 16-3740. Judgment for defendant and determination of damages.

If the issue in an action of replevin pursuant to this subchapter is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant, with damages for their detention, or, on failure, that the defendant recover from the plaintiff and his surety the damages sustained by him. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-732 (Mar. 3, 1901, ch. 854, § 19, 31 Stat. 1193).

Words "or judgment is rendered against plaintiff on proper motion under rules of court," are inserted after "prosecute his suit," for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules 12, 41, and 56 thereof.

With respect to damages, words at end of section 11-732 of D.C. Code, 1961 ed., "to be assessed by the court" are omitted, as there are jury trials in the Court of General Sessions, unless waived. See section 13-502 herein, and rule 38 of the Civil Rules of the Court. For determination, by reference, of damages in cases tried with or without a jury, see rules 53 thereof.

Changes are made in phraseology.

## Chapter 39.—SMALL CLAIMS AND CONCILIATION PROCEDURE IN COURT OF GENERAL SESSIONS

## Sec.

- 16-3901. Practice—Applicability of other laws and rules of court.
- 16-3902. Commencement of action—Form of statement—Preparation by clerk—Notice and service—Costs—Default—Memorandum to plaintiff.
- 16-3903. Fees and costs—Waiver.
- 16-3904. Set-off or counterclaim—Pleading—Retention of jurisdiction.
- 16-3905. Jury trial—Demand—Assignment to regular branch.
- 16-3906. Pre-trial settlement—Trial—Procedure—Default—Dismissal or nonsuit—Other disposition.
- 16-3907. Judgment—Stay—Installment payments—Enforcement.
- 16-3908. Judgment for wages—Oral Examination—Payment.
- 16-3909. Award of costs.
- 16-3910. Other rights of judgment creditor.

### § 16-3901. Practice—Applicability of other laws and rules of court.

All provisions of law relating to the District of Columbia Court of General Sessions and the rules of court apply to the practice in the Small Claims and Conciliation Branch of the court as far as they may be made applicable and are not in conflict with this chapter or chapter 13 of Title 11, or with the rules prescribed pursuant to section 13-101(c). In case of conflict, this chapter and chapter 13 of Title 11 and the rules so prescribed control. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 17-751a, 11-814 (Mar. 5, 1938, ch. 43, § 14, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to District of Columbia Court of General Sessions.

Changes are made in phraseology.

For jurisdiction of the Small Claims and Conciliation Branch of the Court of General Sessions, see section 11-1341 herein. For the Branch's authority to settle disputes by arbitration and conciliation, irrespective of the amount involved, see section 11-1342 herein.

The provisions of section 11-814 of D.C. Code, 1961 ed., on which this revised section is based, are substantially repeated in rule 27 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

### § 16-3902. Commencement of action—Form of statement—Preparation by clerk—Notice and service—Costs—Default—Memorandum to plaintiff.

(a) Actions shall be commenced in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and

shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially appointed by the judge for that purpose.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned, the clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon the defendant.

(c) When notice is served by a private individual, as provided by subsection (a) of this section, he shall make proof of service by affidavit before the clerk, showing the time and place of the service.

(d) When notice is served by the marshal, or by registered mail or by certified mail, the actual cost of service is taxable as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

# DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

## SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in  
courthouse)

(Address of  
court)

Washington, D.C.

Plaintiff

Address  
vs.

Defendant

No. \_\_\_\_\_

## STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

DISTRICT OF COLUMBIA, ss:

\_\_\_\_\_ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

Plaintiff (or agent)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Clerk (or notary public)

## NOTICE

To: \_\_\_\_\_

Defendant

Home address

Business address

You are hereby notified that \_\_\_\_\_ has made a claim and is requesting judgment against you in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), as shown by the foregoing statement. The Court will hold a hearing upon this claim on \_\_\_\_\_ at \_\_\_\_\_ m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL]

Clerk of the Small Claims and Conciliation Branch, Court of General Sessions.

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, not less than 5 nor more than 15 days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the Branch shall be made returnable therein. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-805 (Mar. 5, 1938, ch. 43, § 5, 52 Stat. 103; June 11, 1960, Pub. L. 86-507, § 1(46), 74 Stat. 203; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77, August 5, 1963, Pub. L. 88-85, §§ 1, 2, 77 Stat. 117).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (e) words "and shall be in lieu of any forms now employed and of any form of summons now provided by law", which followed "form", are omitted as obsolete and no longer necessary.

Changes are made in phraseology.

For supplemental provisions relating to the filing of actions, preparation of statement of claim, verification, notice, addresses of parties and attorneys, determination



by judge of method of service, service and cost of service, see rules 3-9 of Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III). For supplemental provisions relating to methods of personal service, see rule 4(c) (1), (2), (3) of that court's regular civil rules (Section I), which is made applicable to actions in the Small Claims and Conciliation Branch by rule 28 of its rules for that branch. See, also, rule 30 of the court's rules for the branch, which repeats the forms of statement of claim, verification, and notice, and contains the forms of return of service, and rule 15 thereof, relating to pleading in that branch.

#### CROSS REFERENCES

Use of certified mail, see, § 14-506.

#### § 16-3903. Fees and costs—Waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall be not more than \$1. Other fees shall be as the court prescribes. The judge sitting in the Branch may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" may not be employed in the Branch. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on all of section 11-807 of the D.C. Code, 1961 ed., except the last sentence thereof. That sentence is carried into section 16-3909 herein.

Changes are made in phraseology.

For supplemental provisions relating to fees and costs and waiver and award of costs, see rules 12, 13, and 29 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III), and rule 85 of the Court's regular civil rules (Section I).

#### CROSS REFERENCE

Fees and costs, generally, see § 15-701 et seq.

#### § 16-3904. Set-off or counterclaim—Pleading—Retention of jurisdiction.

If the defendant, in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch as provided by section 11-1341 but within the jurisdictional limit of the court as provided by section 11-961, the action shall nevertheless remain in the Branch and be tried therein in its entirety. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-809 (Mar. 5, 1938, ch. 43, § 9, 52 Stat. 105).

For supplemental provisions relating to set-off or counterclaim, see rule 15 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

Changes are made in phraseology.

#### § 16-3905. Jury trial—Demand—Assignment to regular branch.

In a case filed or pending in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-818 (Mar. 5, 1938, ch. 43, § 18, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "the regular branch of the civil division" are substituted for "one of the regular branches", to follow more closely the present organization of the Court of General Sessions. See section 11-901 herein and revision note thereunder.

Changes are made in phraseology.

For supplemental provisions relating to demands for jury trials in actions brought in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 17 of the court's rules governing that branch (Section III). For provisions relating to jury trials in the regular branch of the civil division of the court, see section 13-702 herein, and rule 38 of the court's regular civil rules. See, also, chapter 23 of Title 11 herein.

#### § 16-3906. Pre-trial settlement—Trial—Procedure—Default—Dismissal or nonsuit—Other disposition.

(a) On the return day specified by subsection (g) of section 16-3902, or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this chapter, the judge shall make an earnest effort to settle the controversy by conciliation. If he fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 16-3902(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed



for want of prosecution, or make any other just and proper disposition thereof, as justice requires. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-808 (Mar. 5, 1938, ch. 43, § 8, 52 Stat. 105).

Changes are made in phraseology.

For supplemental provisions relating to trial procedure in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 14 of the court's rules governing that branch (Section III).

#### § 16-3907. Judgment—Stay—Installment payments—Enforcement.

When judgment is to be rendered in an action pursuant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the District of Columbia Court of General Sessions for the enforcement of the judgment. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-811 (Mar. 5, 1938, ch. 43, § 11, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For supplemental provisions relating to entry of judgment, stay, installment payments, exemptions, and oral examination of garnishee, see rules 18-23 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

#### § 16-3908. Judgment for wages—Oral examination—Payment.

When a judgment rendered in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-812 (Mar. 5, 1938, ch. 43, § 12, 52 Stat. 106).

Changes are made in phraseology.

For supplemental provisions relating to judgments for wages, oral examination, etc., see rule 25 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

#### § 16-3909. Award of costs.

In the action pursuant to this chapter, the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on last sentence of section 11-807 of D.C. Code, 1961 ed. Remainder of section 11-807 is carried into section 16-3903 herein.

Changes are made in phraseology.

For supplemental provisions relating to the award of costs, and limitations on allowance of attorney fees, see rules 16 and 24 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

#### § 16-3910. Other rights of judgment creditor.

Except as otherwise provided by this chapter, or in the rules prescribed pursuant to section 13-101(c), a party obtaining a judgment in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-819 (Mar. 5, 1938, ch. 43, § 19, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

### Chapter 41.—SURETIES

#### Sec.

16-4101. Relief from suretyship—Counter security, or bond—Removal of officer or fiduciary from office.

16-4102. Subrogation of surety satisfying judgment.

#### § 16-4101. Relief from suretyship—Counter security, or bond—Removal of officer or fiduciary from office.

When the surety, or his personal representatives, of an officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond apprehends himself to be in danger of suffering from the suretyship, and petitions the court to be relieved from the suretyship, or that the court require the officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him. If he fails to do so by a day named, the court may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office or trust, and may thereupon, order him to deliver over to his successor all the



trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with the order by attachment. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-2001 (Mar. 3, 1901, ch. 854, § 1572, 31 Stat. 1424).

Minor changes are made in phraseology.

#### CROSS REFERENCES

Bonds generally, see § 28-2401 et seq.

Counter security by executors and administrators, see § 20-109.

Counter security by guardians, see § 21-122.

#### § 16-4102. Subrogation of surety satisfying judgment.

Where a person recovers a judgment or money decree against the principal debtor and a surety or indorser, and the judgment is satisfied by the surety or indorser, the latter may have the judgment or money decree entered by the clerk to his use and have

execution in his own name against the principal, and where a judgment or money decree is rendered against several sureties and one of them satisfies the whole debt, the surety satisfying the judgment may have the judgment or decree entered to his use, have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him. On the motion of the surety so paying the entire debt and notice to the other sureties, the court may determine for what amount execution shall issue against each of the other sureties. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-2002 (Mar. 3, 1901, ch. 854, § 1573, 31 Stat. 1424).

Changes are made in phraseology.

#### CROSS REFERENCE

Setoff, see § 13-503.

## TITLE 17.—REVIEW

Chap.		Sec.
1. United States Court of Appeals for the District of Columbia Circuit.....		17-101
3. District of Columbia Court of Appeals....		17-301

### Chapter 1.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sec.	
17-101.	Appeal from District of Columbia Court of Appeals—Filing, form and contents of petition.
17-102.	Procedure, generally, on appeal from District of Columbia Court of Appeals—Record—Rules of court.
17-103.	Time for petitioning for allowance of appeal from District of Columbia Court of Appeals.
17-104.	Determination of appeal from District of Columbia Court of Appeals.

#### § 17-101. Appeal from District of Columbia Court of Appeals—Filing, form and contents of petition.

The petition for the allowance of an appeal from a judgment of the District of Columbia Court of Appeals shall be in writing and shall be filed with the clerk of the United States Court of Appeals for the District of Columbia Circuit. The contents of the petition shall conform with requirements that the United States Court of Appeals prescribes by rule. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772, 11-773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from the second sentence of section 11-773 of D.C. Code, 1961 ed. The last sentence of section 11-772 thereof, cited above, made the procedure prescribed in section 11-773 applicable to petitions for the allowance of appeals from judgments of the Municipal Court of Appeals (now, District of Columbia Court of Appeals) given on appeals from orders and decisions of certain administrative agencies.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions of section 11-773 of D.C. Code, 1961 ed., fixing the time during which petitions for allowance of appeals may be filed is carried into section 17-103 herein. For remainder of sections 11-772 and 11-773, see other sections in this title, and tables.

#### § 17-102. Procedure, generally, on appeal from District of Columbia Court of Appeals—Record—Rules of court.

The United States Court of Appeals for the District of Columbia Circuit may prescribe rules governing the:

- (1) practice and procedure on petitions specified by section 17-101; and
- (2) preparation of, and time for filing, the transcript of the record in such cases—

and may generally regulate all matters relating to appeals in such cases. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-772, 11-773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken, with changes in phraseology, from the third sentence of section 11-773 of D.C. Code, 1961 ed. For the reason for also citing section 11-772 thereof, see revision note under section 17-101 herein.

For remainder of sections 11-772 and 11-773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

#### § 17-103. Time for petitioning for allowance of appeal from District of Columbia Court of Appeals.

Petitions for the allowance of appeals from judgments of the District of Columbia Court of Appeals shall, in each case, be filed, as provided by this chapter, within ten days after entry of the judgment from which an appeal is desired. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772, 11-773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from part of the second sentence of section 11-773 of D.C. Code, 1961 ed. For reason for also citing section 11-772 thereof, see revision note under section 17-101 herein.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11-772 and 11-773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

#### § 17-104. Determination of appeal from District of Columbia Court of Appeals.

If the United States Court of Appeals for the District of Columbia Circuit allows an appeal pursuant to section 11-321 and this chapter, it shall review the record on appeal, and shall affirm, modify, vacate, set aside, or reverse the judgment, and may remand the cause and direct the entry of such appropriate judgment or order, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-772, 11-773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken from the fourth sentence of section 11-773 of D.C. Code, 1961 ed., and is reworded to follow the broader and more comprehensive language of section 2106 of Title 28, United States Code, which in all probability already embraces within its scope the determination, by the United States Court of Appeals for the District of Columbia, of appeals from the District of Columbia Court of Appeals.



For reason for also citing, above, section 11-772 of D.C. Code, 1961 ed., see revision note under section 17-101 herein, and for remainder of section 11-772 and 11-773, see other sections in this title, and tables.

### Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

Sec.

- 17-301. Applications for allowance of appeals from certain Court of General Sessions judgments—Hearing—Effect of denial.
- 17-302. Regulations of appeals—Record—Costs.
- 17-303. Appeals from administrative orders and decisions—Petition—Record—Procedure.
- 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision.
- 17-305. Scope of review.
- 17-306. Determination of appeals.
- 17-307. Time for taking or applying for allowance of appeals.

#### § 17-301. Applications for allowance of appeals from certain Court of General Sessions judgments—Hearing—Effect of denial.

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, or from a judgment of the criminal division of that court where the penalty imposed is less than \$50, provided for by section 11-741(c), shall be on a standard form, in simple language, prescribed by the Court of General Sessions. If the appellant is not represented by counsel, the clerk of the Court of General Sessions shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17-307(b), and shall be promptly presented by the clerk of that court to the chief judge and the associate judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When all the judges are of the opinion that an appeal should be denied, the denial shall stand as an affirmation of the judgment of the trial court, and there shall be no further appeal. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961, ed., §§ 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is derived from part of subsec. (a) of section 11-772 of D.C. Code, 1961 ed., with changes in phraseology and arrangement.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (a), "criminal division" is substituted for "criminal branch". See section 11-901 herein and revision note thereunder.

A second paragraph of subsec. (a) of section 11-772 provided that "After the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of that Code, in which said section 11-772 was set out], no writs of error or appeals, except in respect of judgments theretofore rendered, shall be granted by the United States Court

of Appeals for the District of Columbia to the said Municipal Court or to the said Juvenile Court". This paragraph is omitted as obsolete.

For remainder of section 11-772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

#### § 17-302. Regulation of appeals—Record—Costs.

The District of Columbia Court of Appeals may regulate, generally, all matters relating to appeals, whether in the District of Columbia Court of Appeals or in the court below. It may prescribe by rules what part of the proceedings in the court below shall constitute the record on appeal, and may require that the original papers, instead of copies thereof, be sent to it. It may not require that the record or briefs on appeal be printed. If they are printed, the cost of printing may not be taxed as costs in the case. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-767, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section consolidates subsec. (b) of section 11-772 of D.C. Code; 1961 ed., with section 11-767 thereof which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11-741 herein. For remainder of section 11-772, see other sections in this title, and tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

#### § 17-303. Appeals from administrative orders and decisions—Petition—Record—Procedure.

(a) An appeal from an order or decision of an administrative agency, as provided for by section 11-742, is commenced by filing in the District of Columbia Court of Appeals, within the time prescribed pursuant to section 17-307(a), the written petition for review provided by section 11-742(c). Upon the filing of the petition, the clerk of the court shall forthwith, by mail, serve a copy thereof upon the agency affected by the petition. After receipt of the copy of the petition, the agency shall certify and file in the court the original papers comprising the record or any supplementary record, or certified copies of the papers. Upon the filing of the papers, the clerk shall immediately notify the petitioner of the filing.

(b) The District of Columbia Court of Appeals may by rule prescribe:

(1) the form and contents of the petition provided for by this section; and

(2) the time within which the agency affected by the petition shall certify and file the original papers or certified copies thereof as provided by this section—

and regulate generally all matters relating to proceedings on an appeal referred to in this section. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173,



§ 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is derived, with changes in phraseology and arrangement, from the second sentence, part of the third sentence, and the fourth sentence, of subsec. (f) of section 11-772 of D.C. Code, 1961 ed.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11-772, see other sections in this title, and tables.

#### § 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision.

(a) An application for review, or pendency of an appeal, provided for by section 17-303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Board of Commissioners of the District of Columbia, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings provided for by section 17-303. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 7, 77 Stat. 78).

Section is derived, with changes in phraseology and arrangement, from the proviso in subsec. (f) of section 11-772 of D.C. Code, 1961 ed., down to the second semicolon. For remainder of section 11-772, see other sections in this title, and tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

#### § 17-305. Scope of review.

(a) In considering an order or judgment of a lower court or any of its branches, brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The District of Columbia Court of Appeals shall hear and determine appeals from orders or decisions of administrative agencies upon the record of proceedings before the appropriate agency to be certified to the court under rules or instructions as the court from time to time prescribes. In such cases, it shall limit its review to those issues of law or fact that are subject to review on appeal under applicable provisions of existing law. If there is no statutory limitation, the court shall determine

the appeal by rules of law which define the scope and limitations of review of administrative proceedings. Under the rules, by way of elaboration and not limitation, the court may:

(1) as far as necessary to decision and where presented to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action; and

(2) hold unlawful and set aside agency action findings and conclusions found to be:

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence or facts in the record of the proceedings before the court; or

(F) unwarranted by the facts.

In making the determinations as provided by this subsection, the court shall take account of prejudicial error. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-767, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence and all of the third sentence of subsec. (c) of section 11-772 of D.C. Code, 1961 ed., and part of subsec. (f) of section 11-772, with section 11-767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11-741 herein. For remainder of section 11-772, see other sections in this title, and tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

#### § 17-306. Determination of appeals.

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any branch thereof, or any order or decision of an administration agency, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-767, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence of subsec. (c) of section 11-772 of D.C. Code, 1961 ed., and part of the fifth sentence of subsec. (f) of section 11-772, with section 11-767, of the Code which extended the right of appeal to parties aggrieved by orders or judgments of



the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See, revision note under section 11-741 herein.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In connection with the review of orders or judgments of lower courts, subsec. (c) of section 11-772 of D.C. Code, 1961 ed., provided that the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) "shall affirm, reverse, or modify the order or judgment in accordance with law". In connection with the review of orders or decisions of certain administrative agencies (see section 11-742 herein), subsec. (f) of section 11-772 provided that the Court "shall have the power to affirm, modify, or set aside the decision or order complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require". The provisions, as consolidated in this section, are patterned upon section 2106 of Title 28, United States Code, and are more comprehensive of the Court's powers in the determination of appeals.

Subsec. (d) of section 11-772 of D.C. Code, 1961 ed., provided that section 11-772 "shall not apply to any judgments rendered prior to the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of the Code, in which section 11-772 was set out]". This provision is omitted as obsolete. For remainder of section 11-772, see other sections in this title, and tables.

#### § 17-307. Time for taking or applying for allowance of appeals.

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be taken pursuant to section 11-741 or 11-742 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and from judgments in the criminal division of that court where the penalty imposed is less than \$50, specified by section 11-741(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-767, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 78).

Section consolidates with changes in phraseology, part of the fifth sentence of subsec. (a) of section 11-772 of D.C. Code, 1961 ed., and part of the third sentence of subsec. (f) of section 11-722, with section 11-767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11-741 herein.

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The fifth sentence of subsec. (a) of section 11-772 of D.C. Code, 1961 ed., which related to applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Municipal Court (now, the Court of General Sessions), and from judgments of the Criminal Branch of that court where the penalty imposed is less than \$50, is carried into subsec. (b) of this section.

Section 11-772 of D.C. Code, 1961 ed., contained no specific provision prescribing the time during which appeals from other judgments or orders of the Municipal Court (now, the Court of General Sessions) may be taken, or empowering the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) to fix the time by rule. However, the power of the latter court to fix the time by rule was implied in subsec. (b) of section 11-772, which is carried into section 17-302 herein. Therefore, this power is specifically provided for in subsec. (a) of this section, along with the power of the court to fix the time, by rule, during which appeals may be taken from orders or decisions of certain administrative agencies (section 11-742 herein). The latter power was specifically provided for in the third sentence of subsec. (f) of section 11-772.

In subsec. (b), "criminal division" is substituted for "Criminal Branch". See section 11-901 herein and revision note thereunder.

For remainder of section 11-772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

## PART III

# PROBATE LAW AND PROCEDURE

TITLE 18—DECEDENTS' ESTATES AND THEIR  
DISTRIBUTION.

TITLE 19—WILLS.

TITLE 20—ADMINISTRATORS, EXECUTORS, AND  
COLLECTORS.

TITLE 21—GUARDIAN AND WARD, AND INSANE PERSONS.

## TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

### Chapter 1.—LAW OF DESCENTS

#### § 18-101. Course of descents generally.

On the death of any person seized of or entitled to an interest in an estate in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's surviving spouse, if any, and kindred, who according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestates, would be entitled to the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus personalty; and such surviving spouse and kindred shall take as tenants in common in the same proportions as are or shall be fixed by such laws relating to personal property. Subject to the right of dower, such real property shall be liable, in the event of insufficiency of the personal property, for the payment of the intestate's funeral expenses, debts, costs of administration, and estate, inheritance, and succession taxes in the same manner and to the same extent as the personal property of such intestate. Should said lands, tenements, or hereditaments be sold under a decree of a court having jurisdiction over the same, then it shall be unnecessary to secure the consent of said widow or surviving husband to said sale, unless the widow elects to take her dower, if any, in all real estate whereof the husband, prior to November 29, 1957, was seized at any time during the marriage or the surviving spouse elects to take the right of dower provided by section 18-201a as amended. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 1; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 2).

#### AMENDMENT

1961—Act Sept. 14, 1961, amended section generally. For provisions of section prior to this amendment, see section as set out in main volume of the Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the "Marital Property Rights Amendments of 1961."

### REPEAL OF INCONSISTENT PROVISIONS

Section 7 of act Sept. 14, 1961, provided that: "Any provision of law inconsistent with the provisions and amendments of this Act [amending sections 18-101, 18-201a, 18-204, 18-211, and 30-201] is hereby repealed."

### CROSS REFERENCES

Dower rights of husband and wife, see § 18-201a.

Distribution of death benefits of fraternal benefit association, see § 35-901.

Distribution of personal property, see §§ 18-701 to 18-723.

Distribution of proceeds of action for wrongful death, see § 16-1203.

Inheritance by adopted children, see § 16-312.

Renunciations, see § 18-211.

### Chapter 2.—DOWER RIGHTS

#### Sec.

18-201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.

18-204. Absent or incompetent spouse.

18-211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardian or fiduciaries—Renunciation deemed to have been made when nothing passes under bequest or devise—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

§ 18-201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.

Every husband and wife shall acquire by virtue of the marriage a right of dower which shall be an inchoate estate for life in one-third of the real property owned by the other spouse at any time during the marriage, whether by legal or equitable title, and whether held by either spouse at the time of his or her death or not, and such estate, which shall have the same incidents as the common law estate of dower in force and effect in the District of Columbia immediately prior to November 29, 1957, shall be in lieu of any inchoate rights acquired by or which may have attached to the real estate of any husband or wife by virtue of the provisions of subsection (b) of this section, as such subsection was in effect immediately prior to the effective date of this amendment, and shall not operate to the prejudice of any claim for the purchase money of such lands. No such right of dower shall attach to any lands held by any two or more persons as joint



tenants while such tenancy exists; and all provisions of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, as amended, and all other laws in force in the District of Columbia relating to the right of dower and its incidents shall, on and after the effective date of this amendment, be construed to be applicable to both husband and wife. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 3; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 3.)

REFERENCES IN TEXT

Subsection (b) referred to in text will be found in section 18-201a of the main volume.  
 Act of Mar. 3, 1901, referred to in text, relating to dower rights will be found generally set out in this title. For other provisions set out in different parts of the Code see distribution tables relating to act of Mar. 3, 1901, 31 Stat. 1189, in the main volume.

AMENDMENT

1961—Act Sept. 14, 1961, amended the section to read as above set out. The amendment restores the inchoate right of dower and makes the same applicable to both husband and wife. For provisions of section prior to this amendment see section as set out in main volume of Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

CROSS REFERENCE

Renunciations, see § 18-211.

§ 18-203. Forfeiture of dower by desertion and adultery of wife.

NOTES TO DECISIONS

1. Deserting widow's rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower rights permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (1962, 210 F. Supp. 377).

§ 18-204. Absent or incompetent spouse.

Where any married person is a lunatic or insane, and has been so adjudicated by a court of competent jurisdiction and such adjudication remains in force, or where any married person has been absent or unheard of for seven years, the husband or wife, as the case may be, of such lunatic or insane or absent person may grant and convey by his or her separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he or she were unmarried, any real estate which he or she may have acquired since such adjudication or since the beginning of such absence. (Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 5.)

AMENDMENT

1961—Act Sept. 14, 1961, amended section to read as above set out. The amendment makes the section applicable to both husband and wife.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

CROSS REFERENCES

Right of dower of husband and wife, see § 18-201a.  
 Renunciations, see § 18-211.  
 Renunciation of dower rights, see § 30-216.  
 Release of dower generally, see § 30-216.  
 Release of dower of insane person, see § 21-301.

§ 18-210. Devise or bequest to spouse.

NOTES TO DECISIONS

Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

§ 18-211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardians or fiduciaries—Renunciations deemed to have been made when nothing passes under bequest or devise—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

(a) Subject to the provisions of section 18-212 a widow or surviving husband shall by such devise or bequest be barred of any statutory rights or interest she or he may have in the real and personal estate of the deceased spouse or the dower rights provided by section 18-201a, as the case may be, unless within six months after the will of the deceased spouse is admitted to probate, she or he shall file in the probate court a written renunciation to the following effect:

"I, A B, widow (or surviving husband of \_\_\_\_\_, late of \_\_\_\_\_, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband (or wife) exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal property of my said spouse (except that in lieu of my legal share of the real property, I elect to take dower in all the real property of my deceased spouse to which such right is applicable).

(b) In similar manner, where the deceased spouse has died intestate of any real estate and letters of administration have been issued with respect to the estate of such deceased spouse, the surviving spouse shall be barred of the dower rights provided by section 18-201a, unless within six months after such letters of administration have been issued with respect to the estate of the deceased spouse, she or he shall file in the probate court a written renunciation of her or his legal share of such intestate real estate to the following effect:

I, A B, widow (or surviving husband) of \_\_\_\_\_, deceased, in lieu of my legal share of the real property of which my deceased spouse died intestate, do hereby elect to take dower in all the real



property of my deceased spouse to which such right is applicable.

(c) If, during said period of six months, a suit should be instituted to construe the will of the deceased spouse, the period of six months for the filing of such renunciation or election shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise. A renunciation or election may be made in behalf of any spouse unable to act for himself or herself by reason of infancy, incompetency, or inability to manage his or her property, by the guardian or other fiduciary acting for such spouse when authorized so to do by the court having jurisdiction of the person of such spouse. The time for renunciation by any spouse may be extended before its expiration by an order of the probate court for successive periods of not exceeding six months each upon petition showing reasonable cause and on notice given to the personal representative and to such other persons in such manner as the probate court may direct.

(d) In any case where the wife or husband has made no devise or bequest to the spouse, and in any case where nothing passes by any purported devise or bequest, the surviving spouse shall be deemed to have filed a written renunciation as provided in subsection (a) of this section (subject to his or her right to elect dower in lieu of the legal share of real estate within six months from probate of the will provided in subsection (b) of this section).

(e) By renouncing all claim to any and all devises and bequests made to her or him by the will of her husband or his wife pursuant to the provisions of subsection (a) of this section, or in the event that a renunciation shall be deemed to be effected pursuant to the provisions of subsection (d) of this section, the surviving spouse shall be entitled to such share or interest in the real and personal estate of the deceased spouse (including dower if elected in lieu of the legal share in the real estate) which she or he would have taken had the deceased spouse died intestate, except that in neither event shall the surviving spouse be entitled to more than one-half of the net estate bequeathed and devised by said will, or, if dower be elected, one-half of the net personal estate bequeathed and dower in the real estate devised.

(f) Notwithstanding any other provision of law now or heretofore in effect in the District of Columbia, any valid antenuptial or postnuptial agreement which shall have been entered into by the spouses shall govern and the provisions thereof shall determine the rights of the surviving spouse in the real and personal property of the deceased spouse, and the administration thereof, but nothing contained in this subsection shall prohibit any spouse from accepting the benefits of any devise or bequest made to him or her by the deceased spouse. (Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 6; Sept. 14, 1961, 75 Stat. 516, Pub. L. 87-246, § 4.)

#### AMENDMENT

1961—Act Sept. 14, 1961, amended the section generally. For comparison with prior provisions of this section see section in main volume of the Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-204, 18-211, and 30-201) may be cited as the 'Marital Property Rights Amendment of 1961'."

#### CROSS REFERENCE

Right of dower of husband and wife, see § 18-201a.

#### NOTES TO DECISIONS

Deprivation of rights 7  
Renunciation by administrator 13.50  
Renunciation after probate 13.51  
Taxes upon renunciation 15.50

#### 7. Deprivation of rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower rights permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (1962, 210 F. Supp. 377).

#### 13.50 Renunciation by administrator

Right of surviving incompetent widow to renounce will of husband could not be exercised by her administrator after her death. *R. H. Payne et al. v. B. A. Newton, Jr., etc.* (1963, 323 F. 2d 621,—U.S. App. D.C.—).

#### 13.51 Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

Widow, who failed to file renunciation within specified statutory period, and who subsequently sought leave to withdraw prior petition for probate and for letters testamentary and declaration to effect that court order for probate of will was null and void enabling widow to renounce her interest under will, should have instead proceeded for order permitting renunciation and election as of date within statutory period, nunc pro tunc. *Id.*

#### 15.50 Taxes upon renunciation

A widow who renounced will of her husband and elected to share in his estate as if he had died intestate could not claim such share in her husband's estate without diminution for Federal estate tax on theory of provisions in decedent's will. *G. B. Herson v. Mollye Mills ind; and as co-executrix of the estate of D. L. Herson, et al.* (1963, 221 F. Supp. 714).

## Chapter 5.—CLAIMS OF CREDITORS

§ 18-512. Claims of executors and administrators to be passed by probate court.

#### NOTES TO DECISIONS

#### 2. Submission to court

An executrix was precluded from asserting her claim to certain securities on theory that she was entitled thereto under a joint venture agreement with decedent, where executrix failed to submit her claim to the probate court, filed an account which omitted all reference to her purported claim, and without authority of the court retained assets bequeathed by terms of the will to decedent's sister. *M. J. de Pingre v. M. Weissappel* (1963, 322 F. 2d 415,—U.S. App. D.C.—).



## § 18-517. Passing of claims not conclusive.

## NOTES TO DECISIONS

## 1. Effect of passing claim

The probate court is without jurisdiction to compel an executor to pay a claim asserted against a decedent's estate. *J. F. Bird et al., Executors etc. v. C. B. Sullivan Jr.* (1963, 316 F. 2d 675, — U.S. App. D.C. —).

A probate court's approval, however expressed, of a claim against an estate is in legal effect an order that claim will pass when paid, but if executor or administrator contests claim, probate court's order approving it is deprived of even evidential effect. *Id.*

Chapter 7.—DISTRIBUTION OF SURPLUS—  
BENEFICIARIES

## § 18-717. Escheatment.

## NOTES TO DECISIONS

## 5.50. Soldiers' Home inmates

Inmate of United States Soldiers' Home in District of Columbia, retired from regular army, and a resident of District of Columbia, who died without legal heirs or next of kin, was a "soldier" within statute providing for funds for support of the Soldiers' Home, and United States rather than District of Columbia was entitled to escheat of his moneys. *District of Columbia v. Wolverton* (1961, 298 F. 2d 684, 112 U.S. App. D.C. 23).

## TITLE 19.—WILLS

### Chapter 1.—WILLS IN GENERAL

#### § 19-103. Form of will—Witnesses—Alteration—Revocation.

##### NOTES TO DECISIONS

Republication 11.50  
Revocation 12

##### 11.50. Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

##### 12. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor, et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

#### § 19-108. Revival of will after revocation.

##### NOTES TO DECISIONS

Republication 2  
Revocation 3

##### 2. Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

##### 3. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

Instrument designated as "a" codicil, adding bequest and reaffirming will, which named bank as executor and trustee, did not revoke prior codicil naming testator's wife and daughter as coexecutrices. *Id.*

### Chapter 2.—DEVICES BY WILL

Sec.

19-206. "Pour over" trusts.

#### § 19-206. "Pour over" trusts.

(a) *Bequests or devises to trustee under, or in accordance with terms of, existing trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustee or trustees under, or in accordance with the terms of, a written inter vivos trust (including an unfunded life insurance trust, although the settlor has reserved any or all rights of ownership in the insurance contracts) which has been executed and is in existence prior to or contemporaneously with the execution of such will or codicil and is identified in such will or codicil, without regard to the size or character of the corpus of such trust, or whether the settlor is the testator or a third person.

Such devise or bequest shall not be invalid because the trust is subject to amendment or modification or may be terminated or revoked after the will or codicil is executed (whether by the settlor or any other person or persons), nor because the

trust instrument or any amendment thereto was not executed in the manner required by law for wills or codicils.

Unless the will or codicil otherwise provides—

(1) such devise or bequest shall not be invalid because the trust was amended or modified after the will or codicil was executed, and such devise or bequest shall be given effect in accordance with the terms of the trust as they appear in writing on the date of death of the testator, including any such amendment or modification;

(2) property passing under such devise or bequest shall be deemed to pass directly to the trustee or trustees of the inter vivos trust and shall become a part of the assets of such trust, and shall not be deemed held under a separate testamentary trust;

(3) an entire revocation of the trust prior to the death of the testator shall invalidate the devise or bequest even though such revocation was not effected in the manner provided by law for the revocation of wills and codicils.

(4) a termination of the trust, except by way of revocation, in accordance with the terms of said trust or by its exhaustion or by operation of law or otherwise shall not invalidate the devise or bequest.

(b) *Bequests or devises to trustee under, or in accordance with terms of, testamentary trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustee or trustees under, or in accordance with the terms of, a testamentary trust established under another valid will or codicil. Such devise or bequest shall not be invalid because the testamentary trust or the will or codicil establishing such testamentary trust was not in existence when the will or codicil containing such devise or bequest was executed, if the testator of the will or codicil establishing such testamentary trust predeceases the testator of the will or codicil containing such devise or bequest, and such will or codicil establishing such testamentary trust had been or is subsequently admitted to probate.

Unless the will otherwise provides—

(1) property passing under such devise or bequest shall be deemed to pass directly to the trustee or trustees of the testamentary trust and shall become a part of the assets of such trust, and shall not be deemed held under a separate testamentary trust;

(2) a termination of the trust in accordance with the terms of said trust or by its exhaustion or by operation of law or otherwise shall not invalidate the devise or bequest.

The provisions of this section shall apply to any devise or bequest made by a testator living on the



effective date of this Act or born subsequent thereto, without regard to the date of execution of the will or codicil containing such devise or bequest or of the trust instrument, or any amendment thereto: *Provided, however*, That the provisions of this Act shall not be construed as casting any doubt upon the validity as heretofore existing of (a) any devise or bequest made by a testator who shall have died prior to the effective date hereof, or (b) any devise or bequest which does not come within the provisions of this Act. (Mar. 3, 1901, 31 Stat., ch. 854, § 1628a, as added Dec. 5, 1963, 77 Stat. 345, Pub. L. 88-192, § 1.)

#### EFFECTIVE DATE OF AMENDMENT

Section 3 of act Dec. 5, 1963, provides that: "This Act shall become effective upon the date of enactment of this Act."

#### REFERENCES IN TEXT

"This act" referred to in text is the act of Mar. 3, 1901, 31 Stat. ch. 854.

#### REPEAL OF INCONSISTENT PROVISIONS

Section 2 of act Dec. 5, 1963, provides that "Any provisions of law inconsistent with the provisions of this Act is hereby repealed."

### Chapter 3.—PROBATE OF WILLS

#### § 19-303. Guardian ad litem for infant or non compos.

##### NOTES TO DECISIONS

##### 2. Grandchildren

Guardian ad litem was not required to be appointed at time of probate of testator's will to represent testator's grandchildren, since grandchildren were not within class of testator's heirs at law and would not be entitled to or interested in testator's estate in case will had not been executed. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

#### § 19-312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.

Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided*, That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the United States District Court for the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the

court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the United States District Court for the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for impaneling a jury for the trial of said issues shall be the same as if they were being tried in any other part of the court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be res judicata as to all persons; nor shall the validity of such judgment be impeached or examined collaterally. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 140; June 30, 1902, 32 Stat. 526, ch. 1329; Apr. 19, 1920, 41 Stat. 557, ch. 153; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

#### CODIFICATION

The section is set out in this supplement to correct an erroneous reference to the court of appeals. The words "court of appeals" are omitted and the words "in any other part of the court" inserted.

### Chapter 4.—REGISTER OF WILLS

#### §§ 19-401 to 19-404a. Repealed. Dec. 23, 1963, 77 Stat. 621, 622, 625, and 628, Pub. L. 88-241, § 21.

Sections, R.S.D.C. 929 and 930, and act Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 121, as amended, and act Aug. 2, 1949, 63 Stat. 491, ch. 383, §§ 3 and 5, dealt with register of wills, his appointment, oath of office, bond, powers and deposit of fees and costs collected by him. Matter is now covered by sections 11-504 to 11-506.

#### §§ 19-404 and 19-405. Repealed. Aug. 2, 1949, 63 Stat. 492, Ch. 383, § 9.

#### §§ 19-406 to 19-409. Repealed. Dec. 23, 1963, 77 Stat. 621, 622, Pub. L. 88-241, § 21.

Sections, R.S.D.C. 933, 934, and 935, and act Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 120, dealt with posting of fees, penalty for failure to post fees, penalty for charging greater fees and provided that register of wills was to act as probate clerk. Matter is now covered by sections 11-504 to 11-506.

#### §§ 19-410 and 19-411. Omitted.

These sections embodying Maryland statutes, contained provisions prevented register of wills from practicing law and provided a penalty for charging fees. These sections are now superseded by sections 11-504 to 11-506.

## TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

### Chapter 2.—ADMINISTRATORS

#### § 20-201. Granting of letters of administration.

##### NOTES TO DECISIONS

##### 3.50. Largest creditor

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

#### § 20-209. Persons entitled to administer—Males to be preferred.

##### NOTES TO DECISIONS

##### 1. Order of priority

Male paternal first cousins were preferred class over female maternal first cousins as to right to letters of administration. *J. F. Gage et al. v. The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Values of substance inhere in right to letters of administration and those upon whom that right has been conferred by statute should not be deprived of it, except as statute has provided. *Id.*

In appropriate case and for sound reasons, discretion may be exercised to select an administrator from among lesser preferred classes of next of kin. *Id.*

#### § 20-216. Persons entitled to administer—Creditors.

##### NOTES TO DECISIONS

##### Largest creditor 3.50

##### Priority of next of kin 3.51

##### 3.50. Largest creditor

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined

or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

##### 3.51. Priority of next of kin

If there is a next of kin who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed. *J. F. Gage et al. v. The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Where neither pleadings nor oral argument brought to court's attention question that appointment of an outsider as administrator turned upon issue of whether there has been a declination by cousins, appointment of bank as administrator would be remanded for further proceedings. *Id.*

#### § 20-306. Absent executor—Summons—Notice.

If said executor shall not have been present at the probate of the will, but shall be within the District, a summons may be issued to him, either at the instance of any person interested or ex officio by the register of wills, requiring him to appear and file his bond as required by law within five days after service of said summons; and if he be not found in said District, notice shall be given to him by publication to appear within ten days after publication of said notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, as aforesaid, administration may be granted as if no executor had been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 267; June 24, 1949, 63 Stat. 268, ch. 242, § 2.)

##### CODIFICATION

The section is set out in this supplement to give effect to the amendments made by the act of June 24, 1949, which were inadvertently omitted in the main volume. The amendments consisted of striking out the word "twenty" and substituting "five" in lieu thereof and striking the words "within thirty days after the first publication" and substituting the words "within ten days after publication".

#### § 20-605. Disbursements and allowances.

##### NOTES TO DECISIONS

##### 10. Probate Court's authority to compel payment

An attorney may have a claim against executors or estate which he can collect in an action at law in district court but statute authorizing executors to pay attorneys' fees and probate court to allow such fees in executors' accounts does not authorize probate court to order executors to pay the fees. *J. F. Bird et al., Executors etc. v. C. B. Sullivan, Jr.* (1963, 316 F. 2d 675, 115 U.S. App. D.C. 24).





## TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

### Chapter 1.—INFANTS AND OTHER INCOMPETENTS

#### § 21-101. Natural guardians.

##### NOTES TO DECISIONS

##### 1. Custody of child

In action by wife for maintenance and support, exclusive custody of minor children of the parties should not have been awarded to wife where husband and wife and the children remained living together in the same household. *R. L. Clements v. R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

### Chapter 2.—PROPERTY OF INFANTS AND PERSONS NON COMPOS MENTIS

##### Sec.

##### 21-225. Definitions.

21-226. Gifts of securities, money, life insurance, or annuity contracts to minors—Manner of making.

21-227. Gift irrevocable—Rights and duties of guardian or custodian.

21-228. Custodian to be one person—Rights, powers and duties of custodian.

21-229. Compensation of custodian or guardian—Bond—Liability of custodian serving without compensation.

21-230. Successor custodians—Eligibility—Rights, powers and duties—Manner of resignation—Removal.

21-231. Accounting by custodian or his legal representative.

21-232. Persons dealing with donor or custodian, duties of.

21-233. Construction of sections 21-225 to 21-234—Sections not exclusive method for making gifts to minors.

21-234. Separability of provisions.

#### § 21-213. Contract for sale by adult in behalf of himself and infant or person non compos mentis.

If a contract has been made for the sale of lands, tenements, or hereditaments by a person or persons interested therein jointly or in common with an infant, idiot, or person non compos mentis, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of all the circumstances, considers to be for the interest and advantage both of the infant, idiot, or person non compos mentis and of the other person or persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according thereto; and all sales and deeds made in pursuance of the order shall be sufficient in law to transfer the estate and interest of the infant, idiot, or person non compos mentis in the property. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 13.)

##### AMENDMENT

1963—Section 13 of act Dec. 23, 1963, amended section to read as above set out.

#### §§ 21-214 to 21-224. Omitted.

The act entitled "An Act concerning gifts of securities to minors in the District of Columbia," Aug. 3, 1956, 70 Stat. 1028 to 1031, ch. 947, §§ 1 to 11, set out in the main volume of the Code as §§ 21-214 to 21-224, was amended

generally by act Oct. 15, 1962, 76 Stat. 938, Pub. L. 87-821. The act as so amended is set out as sections 21-225 to 21-234 in this supplement. For this reason sections 21-214 to 21-224 are omitted as being superseded by the amended act.

##### RIGHTS OR LIABILITIES UNDER SECTIONS 214 TO 224 NOT AFFECTED

Section 2(b) of act Oct. 15, 1962, provides as follows: "The amendments made to sections 214 to 224, by the first section of this Act [§§ 225 to 234] shall not affect any right or liability under sections 214 to 224 existing on December 31, 1962."

#### § 21-225. Definitions.

As used in sections 21-225 to 21-234, the following terms shall have the meaning ascribed to each:

(1) "Adult": one who has attained the age of twenty-one years.

(2) "Bank": any person or association of persons carrying on the business of banking, whether incorporated or not, in the District of Columbia.

(3) "Broker": one who is lawfully engaged in the business of effecting transactions in securities for the account of others; a bank which effects such transactions; and one who is lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(4) "Court": The United States District Court for the District of Columbia.

(5) "Custodial property":

(A) All securities, money, life insurance and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in the manner prescribed in sections 21-225 to 21-234;

(B) The income from the custodial property; and

(C) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of such securities, money, life insurance and annuity contracts, and income.

(6) "Custodian": one so designated in the manner prescribed in this Act.

(7) "Guardian of a minor": the general guardian, guardian, tutor, or curator of the minor's property, estate or person.

(8) "Issuer": one who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(9) "Legal representative": the executor or the administrator, general guardian, committee, conservator, tutor, or curator of a person's property or estate.



(10) "Life insurance and annuity contracts": shall include only insurance and annuity contracts on the life of a minor or a member of the minor's family as herein defined.

(11) "Member of a minor's family": any of the minor's parents, grandparents, brothers, sisters, uncles, and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(12) "Minor": one who has not attained the age of twenty-one years.

(13) "Security": any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest of participation in, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include a security of which the donor is the issuer. A "security" is in "registered form" when it specifies a person entitled to it or to the right it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(14) "Transfer agent": one who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of securities or in the issue of new securities or in the cancellation of surrender securities.

(15) "Trust company": a bank authorized to exercise trust powers. (Oct. 15, 1962, 76 Stat. 938, Pub. L. 87-821, § 1.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

#### POPULAR NAME

Section 11 of act Oct. 15, 1962, provides as follows: "This Act [sections 21-225 to 21-234] may be cited as the 'District of Columbia Uniform Gifts to Minors Act'."

#### PRIOR ACT

The act entitled "An Act concerning gifts of securities to minors in the District of Columbia," Aug. 3, 1956, 70 Stat. 1028 to 1031, ch. 947, §§ 1 to 11, set out in the main volume of the Code as §§ 21-214 to 21-224, was amended generally by act Oct. 15, 1962, 76 Stat. 938, Pub. L. 87-821. The act as so amended is set out as sections 21-225 to 21-234 in this supplement. For this reason sections 21-214 to 21-224 are omitted as being superseded by the amended act.

#### REPEAL

Section 2(a) of act Oct. 15, 1962, provides as follows: "All laws or parts of laws in conflict with any provision of this Act [sections 21-225 to 21-234], are hereby repealed."

Section 2(c) of act Oct. 15, 1962, provides as follows: "Nothing herein shall be deemed to repeal or modify the Internal Revenue Code of 1954, as amended, and the District of Columbia Income and Franchise Tax Act of 1947, as amended."

#### RIGHTS OR LIABILITIES UNDER SECTIONS 214 TO 224 NOT AFFECTED

Section 2(b) of act Oct. 15, 1962, provides as follows: "The amendments made to sections 214 to 224, by the first section of this Act [§§ 225 to 234] shall not affect any right or liability under sections 214 to 224 existing on December 31, 1962."

#### § 21-226. Gifts of securities, money, life insurance, or annuity contracts to minors—Manner of making.

(a) An adult may, during his lifetime, make a gift of a security, money, life insurance or annuity contract to one who is a minor on the date of the gift, if the subject of the gift is a security—

(1) in registered form, by registering it in the name of the donor, another adult, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act";

(2) not in registered form, by delivering it to an adult other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the designated custodian:

#### GIFT UNDER THE DISTRICT OF COLUMBIA UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act, the following security(ies); (insert an appropriate description of the security or securities delivered sufficient to identify it or them).

-----  
(Signature of donor)

Dated:-----  
(Name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the above Act.

-----  
(signature of custodian)

Dated:-----

(3) If the subject of the gift is a life insurance or annuity contract, the ownership of the contract shall be registered by the donor of such contract in his own name or in the name of an adult member of the minor's family or in the name of any guardian of the minor, followed by the words "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act", and such contract shall be delivered to the person in whose name it is thus registered as custodian. If the contract is registered in the name of the donor as custodian, such registration shall of itself constitute the delivery required by this section.

(4) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult, or a bank with trust powers, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act".

(b) Any gift made in the manner prescribed in subsection (a) may be made to only one minor.

(c) A donor who makes a gift to a minor as prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian shall affect the consummation of the gift. (Oct. 15, 1962, 76 Stat. 939, Pub. L. 87-821, § 2.)



## EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

**§ 21-227. Gift irrevocable—Rights and duties of guardian or custodian.**

(a) A gift made as prescribed in sections 21-225 to 21-234 shall be irrevocable and convey to the minor indefeasibly vested legal title to the security, money, life insurance or annuity contract given, but no guardian of the minor shall have any right, power, duty, or authority with respect to the custodial property except as provided in sections 21-225 to 21-234.

(b) By making a gift in the manner prescribed in sections 21-225 to 21-234, the donor incorporates in his gift all the provisions thereof and grants to the custodian, and to any issuer, transfer agent, bank, broker, insurance company, or third person dealing with a custodian, the respective powers, rights, and immunities provided in sections 21-225 to 21-234. (Oct. 15, 1962, 76 Stat. 940, Pub. L. 87-821, § 3.)

## EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

**§ 21-228. Custodian to be one person—Rights, powers, and duties of custodian.**

(a) Only one person may be the custodian. He shall collect, hold, manage, invest, and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance, or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining that age, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in the manner prescribed in Sections 21-225 to 21-234.

(f) The custodian may sell, exchange, convert, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices, and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act". He shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the same words. He shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property, and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(i) A custodian shall have and hold as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in Sections 21-225 to 21-234, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j) If the subject of the gift is a life insurance or annuity contract, the custodian shall have all of the incidents of ownership in the contract which he may hold as custodian to the same extent as if he were the owner thereof personally. The designated beneficiary of any such contract held by a custodian shall be the minor or, in the event of his death, the minor's estate. (Oct. 15, 1962, 76 Stat. 940, Pub. L. 87-821, § 4.)

## EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

**§ 21-229. Compensation of custodian or guardian—Bond—Liability of custodian serving without compensation.**

(a) A custodian shall be entitled to reasonable compensation for his services and to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties: *Provided*, That a custodian may act without compensation for his services.

(b) Compensation for the guardian or custodian shall be according to:

(1) Any direction of the donor when the gift is made, provided that it is not in excess of any



statutory limitation of the District of Columbia for guardians or custodians;

(2) Any statute of the District of Columbia applicable to custodians or guardians;

(3) Any order of the court.

(c) Except as otherwise provided in sections 21-225 to 21-234, a custodian shall not be required to give a bond for the performance of his duties.

(d) A custodian not compensated for his services shall not be liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in Sections 21-225 to 21-234. (Oct. 15, 1962, 76 Stat. 941, Pub. L. 87-821, § 5.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

### § 21-230. Successor custodians — Eligibility — Rights, powers, and duties—Manner or resignation—Removal.

(a) Only an adult, a guardian of the minor, or a trust company shall be eligible to become successor custodian. A successor custodian shall have all the rights, powers, duties, and immunities of a custodian designated in the manner prescribed by Sections 21-225 to 21-234.

(b) A custodian, other than the donor, may resign and designate his successor by—

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form and each life insurance or annuity contract to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian, each life insurance or annuity contract registered in the name of the successor custodian, and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated

or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87-821, § 6.)

#### EFFECTIVE DATE

Section 3 of the act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

### § 21-231. Accounting by custodian or his legal representative.

(a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under Sections 21-225 to 21-234 or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87-821, § 7.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

### § 21-232. Persons dealing with donor or custodian, duties of.

No issuer, transfer agent, bank, broker, insurance company, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian shall be responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by Sections 21-225 to 21-234, and shall not be obliged to inquire into the validity or propriety under the provisions of Sections 21-225 to 21-234 of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, and shall not be bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87-821, § 8.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

### § 21-233. Construction of sections 21-225 to 21-234—Sections not exclusive method for making gifts to minors.

(a) The provisions of Sections 21-225 to 21-234 shall be construed to effectuate the general purpose thereof to make uniform the law of those States which enact such provisions.



(b) Sections 21-225 to 21-234 shall not be construed as providing an exclusive method for making gifts to minors. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87-821, § 9.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

#### § 21-234. Separability of provisions.

If any provision of Sections 21-225 to 21-234 or the application thereof is held invalid, the other provisions or applications of such provisions shall not be affected thereby. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87-821, § 10.)

#### EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

### Chapter 3.—INSANE PERSONS, INQUESTS

#### § 21-301. Estates of lunatics—Accounting—Compensation—Dower.

##### NOTES TO DECISIONS

##### 14. Statute of limitations

Statute of limitations did not begin to run against repayment of loans made to incompetent's estate by estate's committee until committee's death, when account of estate remained open and unsettled throughout committee's tenure up to and including time of his death. *W. H. Clarke, executor etc. v. V. K. Hickman, Jr., Committee etc.* (1962, 307 F. 2d 660, 113 U.S. App. D.C. 323).

#### § 21-310. Insanity proceedings—Application for writ de lunatico inquirendo, and for observation.

##### NOTES TO DECISIONS

Commitment procedure 2  
Grounds for commitment 4.50

##### 2. Commitment procedure

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S.Ct. 1063, rev'g 288 F. 2d 388).

##### 4.50. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S.Ct. 1063, rev'g 288 F. 2d 388).

#### § 21-311. Issuance of attachment—Examination.

##### NOTES TO DECISIONS

Burden of proof 1.50  
Grounds for commitment 4  
Judicial determination required 7.50

##### 1.50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

##### 4. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

##### 7.50 Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### § 21-315. Commitment after trial.

##### NOTES TO DECISIONS

Burden of proof .50  
District not a voluntary creditor .51  
Grounds for commitment 1.50  
Habeas corpus 2  
Judicial determination required 3

##### .50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 388).

##### .51. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

##### 1.50. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

##### 2. Habeas corpus

Findings, on habeas corpus application for release from mental institution to which petitioner had been confined upon his acquittal for insanity, that petitioner was free from mental disease and mental defect and could not be dangerous by reason of any mental disease or defect did not meet standards required by statute in not containing finding of freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future, irrespective of fact that his mental health might have improved. *W. Overholser v. H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Evidence adduced by petitioner seeking release on habeas corpus from mental institution to which he had been confined pursuant to his acquittal of criminal charges for insanity was insufficient to establish that he had made necessary recovery to point where he would be free from abnormal mental condition or that his release would not expose him or public to danger in reasonably foreseeable future. *Id.*

##### 3. Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### § 21-318. Liability of relatives for costs of maintenance and treatment.

##### NOTES TO DECISIONS

Construction 1.50  
District not a voluntary creditor 2.50  
Evidence 2.51  
Liability for expenses of incompetent 3

##### 1.50. Construction

Statute governing liability of father for cost of maintenance and treatment of insane child is not violative of due process. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F. 2d 790, — U.S. App. D.C. —).



District of Columbia statute governing liability of father for cost of maintenance and treatment of insane child creates liability which is not limited to father living in District. *Id.*

#### 2.50. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F.2d 851, 110 U.S. App. D.C. 39).

#### 2.51. Evidence

Evidence supported finding that father of mental incompetent was financially able to pay \$75 per month toward cost of maintenance and treatment of incompetent in public hospital. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F.2d 790, — U.S. App. D.C. —).

#### 3. Liability for expenses of incompetent

Father's liability for portion of cost of maintenance of mental incompetent in public hospital commenced as of date on which authorities demanded contribution from him. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F.2d 790, — U.S. App. D.C. —).

### § 21-320. Hearing to restore status of paroled person—Petition—Trial—Decision.

#### NOTES TO DECISIONS

Discretionary relief 1.50  
Recommitment without hearing 3

#### 1.50. Discretionary relief

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. *In re Harriet DuBois* (1962, 207 F. Supp. 909).

#### 3. Recommitment without hearing

Where petitioner had been committed to public mental hospital in District of Columbia in 1958 and after petitioner had left without permission an entry was made in hospital records showing that petitioner was discharged as "improved," petitioner could not four year later be recommitted under the prior order without a further hearing on ground that petitioner had not been legally restored. *W. G. Gillis v. D. C. Cameron, Sup't etc.* (1963, 324 F.2d 419, — U.S. App. D.C. —).

### § 21-325. Existing remedies preserved.

#### NOTES TO DECISIONS

#### 1. Discretionary relief

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. *In re Harriet DuBois* (1962, 207 F. Supp. 909).

### § 21-326. Apprehension and detention by police, without warrant, of insane persons found in public places.

#### NOTES TO DECISIONS

Burden of proof 1.50  
Judicial determination required 4.50

#### 1.50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch v. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F.2d 388).

#### 4.50. Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F.2d 388).

### § 21-327. Arrest at other than public places.

#### NOTES TO DECISIONS

Privileged affidavit 3  
Sufficiency of evidence 4

#### 3. Privileged affidavit

Defendant had probable cause to sign affidavits submitted to District of Columbia police as basis for arrest of plaintiff as person of unsound mind, and consequently affidavit was privileged under District of Columbia law, where plaintiff had disclosed to defendant her fears that people were trying to kill her, that unknown persons had damaged her personal possessions and had tried to poison her food, a psychiatrist's report that plaintiff was suffering from paranoid condition was read at hearing held by committee, of which defendant was a member, considering plaintiff's fitness for continued federal employment. *G. L. King v. L. H. Hildebrandt* (1963, 216 F. Supp. 814).

#### 4. Sufficiency of evidence

If one adjudged insane never saw or talked with physicians who filed affidavits prior to his arrest, and spoke only momentarily after arrest to physician who testified that examination disclosed need for hospital care, adjudication of insanity must be vacated. *In re R. V. Helman* (1961, 288 F.2d 159, 109 U.S. App. D.C. 375).

## Chapters 5.—CONSERVATORS

### § 21-501. Appointment of conservators.

#### NOTES TO DECISIONS

#### 1. Redemption by conservator

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp. v. E. F. Jackson* (1962, 298 F.2d 324, 111 U.S. App. D.C. 410).

### § 21-503. Powers and duties of conservator.

#### NOTES TO DECISIONS

#### 2. Redemption by conservator

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp. v. E. F. Jackson* (1962, 298 F.2d 324, 111 U.S. App. D.C. 410).

## PART IV

# CRIMINAL LAW AND PROCEDURE

TITLE 22—CRIMINAL OFFENSES.

TITLE 23—CRIMINAL PROCEDURE.

TITLE 24—PRISONERS AND THEIR TREATMENT.

### TITLE 22.—CRIMINAL OFFENSES

#### Chapter 1.—GENERAL PROVISIONS

##### § 22-104. Second conviction.

###### NOTES TO DECISIONS

###### 2. Notice

Where no notice was given to defendant that government intended to ask for greater penalties as second offender, defendant was only subject to penalty that could be imposed on first offender. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

In second offender cases, government must advise defendant of penalty to be demanded in time for him to demand jury trial. *Id.*

##### § 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

###### NOTES TO DECISIONS

Accessory after fact .50  
Aid and abet 3  
Charged as principal 4  
Guilty knowledge 5.50  
Instructions 6

###### .50. Accessory after fact

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith v. United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

###### 3. Aid and abet

One who aids in commission of crime is as responsible for that act as if he committed it directly. *H. L. Williams and D. G. Reeves v. United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *Id.*

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

###### 4. Charged as principal

Where defendants are charged as principals under aiding and abetting statute, act of one defendant is act of each. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

###### 5.50. Guilty knowledge

To be an "aider and abettor" in unauthorized use of motor vehicle, a mere passenger must be shown to have had guilty knowledge, and this requires more than show-

ing that he rode in automobile, pushed automobile, and repaired a punctured tire. *Wm. H. Kemp, Jr. v. United States* (1962, 311 F. 2d 774, 114 U.S. App. D.C. 88).

Evidence was insufficient to convict defendant as aider and abettor of another in unauthorized use of motor vehicle. *Id.*

###### 6. Instructions

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

##### § 22-106. Accessories after the fact.

###### NOTES TO DECISIONS

###### 1. Accessory after fact

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith v. United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

#### Chapter 4.—ARSON

##### § 22-403. Malicious burning, destruction, or injury of another's movable property.

###### NOTES TO DECISIONS

###### 3.50. Inference of malice

Malice in damaging of right front vent of automobile window could be inferred from intentional wrongdoing and value of property could be inferred from evidence respecting its useful, functional purpose. *F. L. Paige v. United States* (D.C. Mun. App. 1962, 183 A. 2d 759).

#### Chapter 5.—ASSAULT—MAYHEM—THREAT OF BODILY HARM

##### Sec.

22-508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

##### § 22-501. Assault with intent to kill, rob, rape, or poison.

###### NOTES TO DECISIONS

Evidence—Sufficiency 3  
Identity of victim 3.50  
Instructions 6  
Intent to rape 7  
Question for jury 8.50

###### 3. Evidence—Sufficiency

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon v. United States* (1963, 318 F. 2d 223, — U.S. App. D.C. —).

Evidence was sufficient to show requisite intent in prosecution for assault with intent to commit robbery. *R. Oden v. United States* (1961, 295 F. 2d 547, 111 U.S. App. D.C. 201).



## 3.50. Identity of victim

It was not necessary to allege identity of person sought to be robbed where defendant was charged with assault to commit robbery, and such information, if desired by defendant, should have been sought by motion for a bill of particulars. *S. E. Young v. United States* (1961, 288 F. 2d 398, 109 U.S. App. D.C. 414).

## 6. Instructions

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering the fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon v. United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

## 7. Intent to rape

To make out a case of "assault with intent to commit rape", the evidence must show beyond a reasonable doubt (1) an assault, (2) an intent to have carnal knowledge of female, and (3) a purpose to carry into effect such intent with force and against consent of the female. *W. A. Baber v. United States* (1963, 324 F. 2d 390, — U.S. App. D.C. —).

In prosecution for assault with intent to rape, defendant was entitled to directed verdict because of lack of evidence of purpose to carry into effect the intent to commit rape with force and against consent of victim. *Id.*

## 8.50. Question for jury

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins v. United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

## § 22-502. Assault with intent to commit mayhem or with dangerous weapon.

## NOTES TO DECISIONS

Evidence 3  
Instructions 5

## 3. Evidence

Evidence was sufficient to present question for jury as to whether defendant was guilty of assault with a dangerous weapon. *R. Dean v. United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

## 5. Instructions

Errors, if any, in instructions in prosecution for assault with dangerous weapon, on burden of proof to negate claim of defendant that discharge of the pistol was accidental, and with respect to credibility of chief witness for the prosecution, were not, under the circumstances, prejudicial. *R. Dean v. United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

## § 22-504. Assault or threatened assault in a menacing manner.

## NOTES TO DECISIONS

Admissibility of evidence 6  
Aid and abet .50  
Corroboration 9  
Cross-examination 4.50  
Instructions 15  
Review 19

## .50. Aid and abet

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *H. L. Williams and D. G. Reeves v. United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory

that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

## 4.50. Cross-examination

Although goal of counsel of defendants charged with assault was to show victim's real background by examining him concerning his employment history and experience, ordering discontinuance of such line of questioning after a recitation that victim had worked at last employment for 8 months, before that for 6 months at another employment and still earlier at a third employment was justified to avoid needless preoccupation with collateral matters. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

While cross-examination is basic right, it is subject to reasonable regulation by court in interest of orderly and expeditious trial. *Id.*

Cross-examination is an absolute right. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

In prosecution for assault, cross-examination of the prosecutrix respecting her past experiences, emotional history and background to shed light on her testimonial reliability was not unduly curtailed. *Id.*

## 6. Admissibility of evidence

Exclusion of testimony as to victim's prior specific acts of violence, communicated to but not personally observed, by defendant who was accused of assault and claimed self-defense, was error. *J. M. King v. United States* (D.C. Mun. App. 1962, 177 A. 2d 912).

In prosecution for assault or homicide accused may show prior acts of violence by alleged victim to support claim of self-defense. *Id.*

Time alone is not controlling in determining the spontaneity of an exclamation, and of equal importance is whether the declaration was influenced by external circumstances of physical shock or stress of nervous excitement. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Admitting testimony of witness as to her conversation with the assaulted complainant though more than an hour occurred between the assault and the report to the witness was not error as violating the hearsay rule. *Id.*

## 9. Corroboration

Testimony of complaining witness in prosecution for assault was sufficiently corroborated. *D. Konvalinka v. United States* (1961, 287 F. 2d 346, 109 U.S. App. D.C. 307; aff'g 162 A. 2d 778).

## 15. Instructions

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Failure to instruct jury as to effect of five-hour delay in reporting alleged assault to the police was not error where no such instruction was requested. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

## 19. Review

Defendant prosecuted for assault was not entitled to a continuance and trial before a new jury panel because members thereof were prejudiced in that on the day before defendant's trial his wife was convicted by a jury for carrying a dangerous weapon and the defendant's and wife's jury were selected from the same array, where the defendant's contention had no support in the record. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

## § 22-505. Assault on member of police force.

## NOTES TO DECISIONS

Evidence 1.50  
Instructions 2

## 1.50. Evidence

Evidence sustained conviction for assaulting and interfering with an officer of the metropolitan police depart-



ment engaged in performance of his official duties. *I. R. Lawson v. United States* (1962, 301 F. 2d 520, 112 U.S. App. D.C. 196).

## 2. Instructions

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon v. United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

## § 22-507. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than \$500 or imprisoned not more than six months, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 11(b).)

### AMENDMENT

1963—Section 11(b) of act Dec. 23, 1963, amended section to read as above set out.

### NOTES TO DECISIONS

#### 1. Evidence—Admissibility

Admission of testimony that defendant charged with threatening to do bodily harm to complainant had made prior threats to do bodily harm and to shoot her was admissible to show state of mind of defendant and complainant. *C. B. McDonald v. United States* (D.C. Mun. App. 1962, 183 A. 2d 396).

Generally, evidence of offense wholly independent of crime charged is inadmissible, but such evidence is admissible where acts are so blended or connected with the one on trial that proof of one incidentally involves the other, they explain the circumstances of offense charged, or they tend to logically prove any element of the offense. *Id.*

Evidence of conduct prior to commission of alleged crime is admissible if so related or connected with crime as to establish common scheme of purpose, the pursuance of a single object, or defendant's guilty knowledge, intent, or motive. *Id.*

## § 22-508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

[Transferred from former section 16-705]

In case any person or persons whatsoever, shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight such other person or persons upon the account aforesaid, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, shall suffer imprisonment during the term of two years. (9 Ann. ch. 14, § 8, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 692; Comp. Stat. D.C., p. 245, § 17.)

### CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

### CROSS REFERENCE

Assaults and disorderly conduct generally, see §§ 22-501 to 22-507, 22-1101 to 22-1120.

## Chapter 9.—DOMESTIC RELATIONS

### § 22-901. Cruelty to children.

#### NOTES TO DECISIONS

#### 4. Instructions

Failure to instruct that jury was required to find beyond a reasonable doubt that defendant was under a legal duty to supply food and necessities to infant before they could find her guilty of manslaughter in failing to provide such items was plain error. *M. L. Jones v. United States* (1962, 308 F. 2d 307, 113 U.S. App. D.C. 352).

Finding of legal duty was critical element of crime of involuntary manslaughter based on breach of legal obligation to provide food and necessities to an infant, with such failure resulting in his death. *Id.*

## § 22-903. Willful neglect or refusal to support wife or minor child—Punishment—Order of allowance—Recognizance—Trial under original charge.

#### NOTES TO DECISIONS

#### .50. Abuse of Discretion

No abuse of discretion appeared in denial of motion to withdraw guilty plea to nonsupport charge against defendant who, though he had previously pleaded guilty to similar charge, contended that he did not recognize significance of charge and that failure to support was due to financial inability. *W. Campbell Jr. v. United States* (D.C. Mun. App. 1961, 168 A. 2d 532).

## Chapter 10.—FORNICATION

### § 22-1002. Fornication.

#### NOTES TO DECISIONS

#### 2. Nature of offense

Government employee's alleged taking of a hotel room with a prostitute did not constitute "criminal conduct" which would support dismissal of the government employee where the conduct charged was not a crime under applicable laws even though employee had admitted his act to police and had forfeited collateral following a purported arrest therefor. *A. Pelicone v. L. H. Hodges, Secretary etc.* (1963, 320 F. 2d 754, — U.S. App. D.C. —).

## Chapter 11.—DISORDERLY CONDUCT

### § 22-1101. Affrays.

Whoever is convicted of an affray or of keeping a bawdy or disorderly house in the District shall be fined not more than \$500 or imprisoned not more than one year, or both. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a).)

#### AMENDMENT

1963—Section 11(a) of act Dec. 23, 1963, amended section to read as above set out.

## § 22-1107. Unlawful assembly—Profane and indecent language.

#### NOTES TO DECISIONS

Elements of offense .50  
Evidence 1

#### .50. Elements of offense

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen v. District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*



## 1. Evidence

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

## § 22-1112. Lewd, indecent, or obscene acts.

## NOTES TO DECISIONS

Act committed in privacy 1  
Corroboration of evidence 5  
Evidence 4  
Intent 8  
Public place 8.50  
Res Judicata 9.50

## 1. Act committed in privacy

Ordinary acts involving exposure as result of carelessness or thoughtlessness, particularly when such acts take place within privacy of one's home, do not in themselves establish offense of indecent exposure. *G. B. Selph v. District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence was insufficient to sustain conviction for indecent exposure. *Id.*

Nudity is not per se "obscene", and it is not illegal for a man to be completely unclothed in his room; it becomes so only if he intentionally exposes himself to other persons. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

## 4. Evidence

Evidence of government which presented two women complainants, who testified they saw defendant exposing himself, positively identifying him as maintenance man in their apartment development, was sufficient to sustain finding of his guilt of obscene and indecent exposure notwithstanding his production of five alibi witnesses. *R. Campbell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 557).

## 5. Corroboration of evidence

There must be corroboration in sex offenses, especially where offense is purely verbal and proof disappears as soon as words are spoken, but government is not required to produce witness who actually heard words spoken and corroboration may consist of circumstantial evidence supporting prosecutrix story. *A. Goodsaid v. District of Columbia* (D.C. App. 1963, 187 A. 2d 486).

Reluctance of woman, who contended that taxicab driver made indecent sexual proposals to her, to make complaint, driver's offer to apologize for what he might have said, his failure to make immediate denial of charges, and fact that, after period of over two weeks, he recognized complainant as former passenger, recalled engaging in conversation with her, and remembered his remark to her as she left taxicab sufficiently corroborated complainant's story. *Id.*

Testimony of police officers who had observed commission of indecent act constituted valid corroboration of alleged act. *L. R. Herland v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

## 8. Intent

Before conviction for indecent exposure can be upheld, it must be shown that exposure was intentional, not accidental. *G. B. Selph v. District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence disclosed that defendant, who appeared without clothes in early morning hours at second floor window of his hot and oppressive room at rear of hotel overlooking seemingly uninhabited alley area and who was observed by several police officers and room clerk, did not deliberately and intentionally expose himself, so that he was not guilty of obscene or indecent exposure. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

An exposure becomes indecent when it occurs at such a time and place where reasonable man knows or should know his act will be open to observation of others; the required criminal intent is usually established by some action by which defendant draws attention to his exposed condition or by display in place so public that it must be presumed it was intended to be seen by others. *Id.*

## 8.50. Public place

Unlocked wash room in hotel in which indecent act occurred was a public place, and fact that other participant willingly engaged did not relieve defendant from guilt in committing such act in public. *L. R. Herland v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

## 9.50. Res judicata

The acquittal of defendant of charge of committing an indecent act precluded the government, as a matter of law, from relying on the evidence relating to this alleged indecent act to support its charge of an alleged indecent exposure on the same night. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

## § 22-1121. Disorderly conduct—Generally.

## NOTES TO DECISIONS

Construction 1  
Due process 1.48  
Elements of offense 1.49  
Evidence 1.50  
Intent 3

## 1. Construction

Disorderly conduct statute is violated when there is noisy, riotous, or inflammatory behavior provoking breach of peace, but there can be violation of such statute without such extreme conduct. *Scott, Ewald, Carpenter and Young v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Defendant in ordering followers into hostile audience to stop heckling of speech and assault of one spectator as direct result of defendant's command to his followers, authorized conviction of disorderly conduct. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

## 1.48. Due process

Disorderly conduct statute does not violate due process clause of Fifth Amendment although it does not require proof of breach of peace element; such statute does no more than give police the right within reasonable limitations to keep public sidewalks free of unnecessary obstructions and prevent groups from congregating in way that breach of peace might result. *Scott, Ewald, Carpenter and Young v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Government, which was prosecuting defendants who had stationed themselves just west of northwest gate of White House and wore arm bands reading "Bomb Tests Kill People" for disorderly conduct, was not required to prove actual or impending breach of peace. *Id.*

## 1.49. Elements of offense

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen v. District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*

## 1.50. Evidence

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

## 3. Intent

Under statute, one lacking intent to be disorderly may nevertheless be guilty if conduct is such that breach of peace may be occasioned thereby. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).



## Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

### § 22-1301. False pretenses.

#### NOTES TO DECISIONS

Double jeopardy 6.50  
Evidence 9  
Inconsistent offenses 11.50  
Proceeds of check 21.50

#### 6.50. Double jeopardy

The offense of obtaining motor vehicle by means of false pretenses in violation of District of Columbia Code and offense of transporting motor vehicle in interstate commerce knowing it to have been stolen in violation of Criminal Code of United States involve different elements and require different proof and are separate and distinct offenses even though same vehicle is subject of both acts, and prosecution and punishment of defendant for both offenses does not constitute double jeopardy. *United States v. J. W. Oates* (1963, 314 F. 2d 593, U.S. App. 4th Ct.).

#### 9. Evidence

Evidence was sufficient to sustain conviction on charge of false pretenses in connection with a stock and worthless check transaction. *H. N. Kelly, Jr. v. United States* (1961, 297 F. 2d 437, 111 U.S. App. D.C. 360).

#### 11.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### 21.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

## Chapter 14.—FORGERY—FRAUDS

### § 22-1401. Forgery.

#### NOTES TO DECISIONS

Evidence 7.50  
Writings included 12

#### 7.50. Evidence

Reception, in forgery prosecution, of exhibit consisting of card completed voluntarily by defendant while in custody on which he had listed prior arrests, received to permit comparison of handwriting with that on checks, was prejudicially erroneous and required new trial notwithstanding that it was not clear that jury saw card and that there was other evidence of his guilt. *R. E. Leigh v. United States* (1962, 308 F. 2d 345, 113 U.S. App. D.C. 390).

#### 12. Writings included

Statutes proscribing forgery of any writing and any writing of public or private nature which might operate to prejudice another included defendant's forging of name of attorney on praecipes by which defendant entered appearances in cases, and forging of a registration card. *Morgan v. United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

### § 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

#### NOTES TO DECISIONS

#### 4.50. Recovery on bond

The word "trading" in clause excluding trading loss from coverage of brokers' bond meant buying and selling of securities on customer's account, and loss occurring when brokers' employee accepted order to purchase substantial amount of stock for customer who gave bad check was such a loss. *L. Sade et al. v. National Surety Corp.* (1962, 203 F. Supp. 680).

## Chapter 15.—GAMBLING

### § 22-1501. Lotteries—Promotion—Sale or possession of tickets.

#### NOTES TO DECISIONS

Admissibility of evidence—Arrest, search and seizure 2  
Arrest, search and seizure—In general 4

#### 2. Admissibility of evidence—Arrest, search and seizure

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### 4. Arrest, search and seizure—In general

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

### § 22-1502. Possession of lottery or policy tickets.

#### NOTES TO DECISIONS

Admissibility of evidence—Arrest, search and seizure 2  
Arrest, search and seizure—In general 4  
Confrontation of informer 4.50  
Sufficiency of evidence 17

#### 2. Admissibility of evidence—Arrest, search and seizure

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#### 4. Arrest, search and seizure—In general

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### 4.50. Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

#### 17. Sufficiency of evidence

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

### § 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent Offenses.

\* \* \* \* \*

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22-1501;



(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of 22-1504; or

(3) in maintaining any gambling premises, shall be subject to seizure by any member of the Metropolitan Police force, or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the municipal court for the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Commissioners of the District of Columbia may, by order or by regulation, provide: *Provided*, That if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

(Sept. 21, 1961, 75 Stat. 540, Pub. L. 87-259, § 1.)

#### CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions". See section 11-751a.

#### AMENDMENT

1961—Section 1 of act Sept. 21, 1961, amended subsection (c) so as to give the Municipal Court for the District of Columbia jurisdiction over libel actions involving such seized property regardless of its value and also providing that the action be brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants. The act made other amendments as well. See original subsection (c) in main volume.

#### CONSTRUCTION OF ACT SEPT. 21, 1961, AND DELEGATION OF AUTHORITY

Section 2 of act Sept 21, 1961, provided that: "This Act [amending subsection (c)] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

#### NOTES TO DECISIONS

Arrest, search and seizure 2  
Evidence—Admissibility 4  
Public auction 12.50

#### 2. Arrest, search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received,

gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### 4. Evidence—Admissibility

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### 12.50. Public auction

Even though sale at public auction, of motor vehicle seized because it was used for gambling purposes in violation of law, would result in insufficient funds to fully discharge lien, court was without power to direct transfer in specie as alternative to auction sale directed by statute. *General Motors Acceptance Corp. v. One 1962 Chevrolet Sedan, etc.* (D.C. App. 1963, 191 A. 2d 140).

#### § 22-1508. Gambling pools and book making—Athletic contest defined.

#### NOTES TO DECISIONS

Evidence 4  
Search and seizure 6

#### 4. Evidence

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### 6. Search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

#### Chapter 18.—HOUSEBREAKING

#### § 22-1801. Definition and penalty.

#### NOTES TO DECISIONS

Admissibility of evidence 5  
Arrest without warrant 3  
Corpus delicti 3.50  
Corroboration of evidence 3.51  
Evidence 6  
Admissibility 5  
Sufficiency 6  
Suppression 6.50  
Impeachment 7.50  
Instructions 9  
Intent 10  
Judicial comment 11.50  
Sufficiency of evidence 6  
Suppression of evidence 6.50  
Witnesses, evidence 7  
Voluntary confession 15.50

#### 3. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260). Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of



stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

### 3.50. Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

### 3.51. Corroboration of evidence

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith v. United States*, (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

### 5. Evidence—Admissibility

Testimony by police officer concerning a conversation in which co-defendant stated that defendant was with him in a housebreaking was pure hearsay as to defendant and was not admissible against him and should not have been admitted at all when it was no essential part of co-defendant's own confession of guilt, and objection by defendant that testimony was not admissible was adequate, and its admission over objection was prejudicial. *D. Kramer v. United States* (1963, 317 F. 2d 114, 115 U.S. App. D.C. 50).

Where same evidence was used to connect defendant with crimes charged in counts two, three, and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States v. J. A. Naples* (1962, 205 F. Supp. 944).

### 6. Sufficiency of evidence

In prosecution for housebreaking with intent to commit an assault evidence was sufficient for jury. *W. A. Baber v. United States* (1963, 324 F. 2d 290, — U.S. App. D.C. —).

Evidence was sufficient to sustain conviction for attempted housebreaking. *J. Hart v. United States* (D.C. App. 1963, 187 A. 2d 329).

Evidence sustained defendant's conviction of housebreaking and petit larceny. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

### 6.50 Suppression of evidence

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

### 7. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

### 7.50. Impeachment

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

### 9. Instructions

Failure to charge on unlawful entry in prosecution for housebreaking, an offense which required finding of larcenous intent in addition to elements of unlawful entry, was harmless where jury found defendant guilty

of larceny as well as of housebreaking. *C. W. Stewart v. United States* (1963, 324 F. 2d 443, — U.S. App. D.C. —).

District court in housebreaking prosecution did not err in refusing instruction on lesser offenses, where request was not made until conclusion of charge and did not specify any particular offenses or show their inclusion within offense charged. *L. Britton v. United States* (1962, 301 F. 2d 531, 112 U.S. App. D.C. 207).

### 10. Intent

While in some circumstances elements of unlawful entry are comprehended within those of housebreaking, latter requires also finding of larcenous intent. *C. W. Stewart v. United States* (1963, 324 F. 2d 443, — U.S. App. D.C. —).

### 11.50. Judicial comment

Comment by court, while co-defendant was on witness stand, that honest people are in bed at 3:00 in the morning was prejudicial and defendant, who was convicted of housebreaking, was entitled to a new trial. *R. Cunningham v. United States* (1962, 311 F. 2d 772, 114 U.S. App. D.C. 86).

### 15.50. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

## Chapter 20.—INDECENT PUBLICATIONS

### § 22-2001. Definition and penalty.

#### NOTES TO DECISIONS

Bill of particulars 1.50  
Consolidation of charges 1.51  
Instructions 3.50  
Public trial 4.50  
Sufficiency of evidence 6  
Witnesses, evidence 28

### 1.50. Bill of particulars

Refusal to grant bill of particulars was not abuse of discretion where informations referred with specificity to times and places of performances claimed to violate obscene exhibitions statute, and defendant revealed complete familiarity with acts charged. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

### 1.51. Consolidation of charges

Defendant could be charged with three offenses of violating obscene exhibitions statute and was not entitled to proceed to trial on but one information, and the three separate informations were properly combined for trial, where there were three separate shows each involving elements essential to support violation of the statute. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

### 3.50. Instructions

Error, if any, in instructing that president of corporation operating restaurant with stage show consisting of three female impersonators could be convicted of violation of obscene exhibitions statute if he knew or should have known nature and character of the "premises" was harmless where jury was explicitly charged that intent was essential element of the crime. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Statement in charge to jury that material charged in indictment was, in court's opinion, actually obscene in eyes of law did not require reversal of obscenity conviction, considering whole charge which left issue of obscenity for jury and stated that judge's comments on evidence were not binding on jury. *A. J. Heinecke v. United States* (1961, 294 F. 2d 727, 111 U.S. App. D.C. 98).

### 4.50. Public trial

In prosecution for possessing obscene pictures with intent to exhibit them, defendant's right to a public trial was not denied because when the alleged obscene film was shown in court the public, except newspaper reporters, were excluded. *B. W. Lancaster v. United States* (1961, 293 F. 2d 519, 110 U.S. App. D.C. 331).

### 6. Sufficiency of evidence

Evidence sustained conviction of charge of giving or participating, on three separate occasions, in public exhibitions containing obscene, indecent, or lascivious



language, postures, or suggestions, or otherwise offending public decency. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

#### 28. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

### Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

#### § 22-2201. Grand larceny.

##### NOTES TO DECISIONS

Arrest without warrant 1.50  
Inconsistent offenses 9.50  
Instructions 12  
Larceny by conversion 14.50  
Proceeds of check 18.50  
Search and seizure 20.50  
Sufficiency of evidence 6

##### 1.50. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

##### 6. Sufficiency of evidence

Television showroom manager was properly qualified as an expert as to value of television set which was stolen and manager's testimony was sufficient to prove value in excess of \$100 as required for conviction for grand larceny. *J. Owens v. United States* (1963, 318 F. 2d 204, —U.S. App. D.C. —).

##### 9.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

##### 12. Instructions

In grand larceny prosecution, instruction on petit larceny was unnecessary where there was nothing in evidence to indicate value of less than \$100. *W. Chew v. United States* (1962, 298 F. 2d 334, 112 U.S. App. D.C. 6).

##### 14.50. Larceny by conversion

One who obtains money from another upon representation that he will perform certain service therewith for the latter, intending at the time to convert the money, and actually converting it, to his own use, is guilty of larceny. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

##### 18.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsify-

ing entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

##### 20.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

#### § 22-2202. Petit larceny—Order of restitution.

##### NOTES TO DECISIONS

Arrest without warrant 1  
Plea of guilt 9  
Search and seizure 11.50

##### 1. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

##### 9. Plea of guilty

Failure to move to withdraw guilty plea to misdemeanor charge made while defendant was 20 years old would not foreclose him from making motion to withdraw plea on contention that it had not been knowingly and intelligently made as he had not understood that he could be sentenced under Youth Corrections Act for longer period than year sentence provided for misdemeanor charge but court reviewing conviction would remand case to give him opportunity to move district court for leave to withdraw plea. *R. B. Carter v. United States* (1962, 306 F. 2d 283, 113 U.S. App. D.C. 123).

##### 11.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

#### § 22-2203. Larceny after trust.

##### NOTES TO DECISIONS

Delivery of property .50  
Independent contractor 3.50

##### .50. Delivery of property

For purposes of statute providing punishment for one guilty of larceny after trust, delivery of property to defendant by owner's vendor, acting for owner, was tantamount to delivery by owner; but even if it were not, defendant would not be entitled to acquittal, since statute does not require delivery by owner. *United States v. A. Manolias* (1961, 190 F. Supp. 234).



**3.50. Independent contractor**

Independent contractor, who had been entrusted with property and who had complete dominion and control over it for purpose of installing it in connection with electrical work which he had contracted to do, was not a mere custodian of property and could be convicted of larceny after trust. *United States v. A. Manolias* (1961, 190 F. Supp. 234).

**§ 22-2204. Unauthorized use of vehicles.****NOTES TO DECISIONS**

Evidence 4  
Prima facie rule 5  
Review 6.50

**4. Evidence**

Evidence was sufficient to show ownership of automobile and corporate existence of owner and to sustain conviction of unauthorized use of automobile without consent of owner. *J. C. Dixon v. United States* (1961, 292 F. 2d 768, 110 U.S. App. D.C. 275).

Admission of evidence beyond scope of bill of particulars as to date when automobile was first known to be missing was not error, in prosecution for unauthorized use of automobile without consent of owner. *Id.*

**5. Prima facie rule**

In prosecution for unauthorized use of a motor vehicle and interstate transportation of a stolen motor vehicle, charge that exclusive and unexplained possession of recently stolen property is "sufficient to support" a verdict of guilty of larceny was inadequate in that it failed to make clear that, if jury found exclusive possession by defendant of recently stolen goods, jury could, but was not required to, find that defendant had stolen the goods. *D. C. McKnight v. United States* (1962, 309 F. 2d 660, 114 U.S. App. D.C. 40).

**6.50. Review**

No errors affecting substantial rights occurred in a prosecution for unauthorized use of a vehicle without the owner's consent. *R. L. Jenkins v. United States* (1963, 324 F. 2d 399, — U.S. App. D.C. —).

**§ 22-2205. Receiving stolen goods.****NOTES TO DECISIONS**

Evidence—Admissibility 3  
Confrontation of informer 3.50  
Corroboration 4  
Guilty knowledge 4.50  
Sufficiency 5

**3. Evidence—Admissibility**

Evidence that defendant, charged with receiving stolen property, had on previous occasion knowingly received stolen property was admissible for limited purpose of showing intent and guilty knowledge. *W. J. Blackburn v. United States* (D.C. Mun. App. 1961, 171 A. 2d 254).

**3.50. Confrontation of informer**

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

**4. — Corroboration**

Uncorroborated testimony of shoplifters as to origin and ownership of goods, while normally of questionable reliability, is sufficient, if believed, to warrant conviction for receiving stolen goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

**4.50. Guilty knowledge**

Accused's knowledge of goods' true character may be inferred from great disparity between sale price and prevailing price for similar or identical goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

**5. — Sufficiency**

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

**Chapter 23.—LIBEL—BLACKMAIL****§ 22-2305. Blackmail.****NOTES TO DECISIONS****5. Sufficiency of evidence**

Evidence was sufficient to present question for jury as to whether defendant, who allegedly threatened to tell complaining witness' wife that he had caused pregnancy of another woman, was guilty of blackmail. *U. Salley v. United States* (1962, 306 F. 2d 814, 113 U.S. App. D.C. 207).

**Chapter 24.—MURDER—MANSLAUGHTER****§ 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.****CROSS REFERENCES**

Punishment for first and second degree murder, see § 22-2404.

**NOTES TO DECISIONS**

Admissibility of evidence 11  
Arraignment 1  
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Elements of crime 10  
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**1. Arraignment**

Defendant's convictions for robbery and felony-murder would not be deemed secured through information obtained in violation of rule requiring prompt arraignment, or in violation of due process and speedy trial amendments to the federal Constitution, where defendant was presented in court on day he surrendered, no confession by defendant was introduced against him, evidence established all basic elements of the crimes, and defendant took the stand and described his participation in the robbery and fatal shooting. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

**5. Confessions**

Defendant accused of homicide failed to sustain burden of proving that his prior statement was improperly admitted at trial on ground that it was made after committing magistrate had failed to comply with rule relating to defendant's right to know charge against him and to retain counsel. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

**7. Corpus delicti**

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

**10. Elements of crime**

The distinguishing characteristic of first degree murder is that it is a deliberate, premeditated, intentional killing, while killing in second degree murder may be intentional or unintentional, but it must, in either event, result from a willful and malicious act. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

**11. Admissibility of evidence**

Evidence of one defendant's activities prior to alleged homicide was admissible in prosecution of three defendants for such homicide, in view of close proximity, in time, place and persons between such activities and subsequent homicide. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Where same evidence was used to connect defendant with crimes charged in counts two, three and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on



count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States v. J. A. Naples* (1962, 205 F. Supp. 944).

#### 11.50. Evidence—Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey v. United States* (1961, 296 F. 2d 442, 111 U.S. App. D.C. 300).

#### 12. Evidence—Sufficiency

Evidence sustained conviction for second degree murder. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence sustained conviction for robbery and felony-murder. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

#### 14. Housebreaking

Killing of deceased by defendant as he was securing loot and preparing to leave premises into which he had broken was a homicide committed in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

#### 15. Indictment

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloniously did murder" named person "by means of shooting him with a pistol". *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

An indictment charging a defendant with felony-murder, charged first degree murder, even though indictment omitted an allegation to the effect that accused was of sound memory and discretion. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

An indictment charging first degree murder was not defective, even though it did not contain the phrase "being of sound memory and discretion." *W. Jones v. United States* (1961, 296 F. 2d 398, 111 U.S. App. D.C. 276).

An allegation of sanity is not required in an indictment. *Id.*

#### 16. Instructions

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premeditation and deliberation do not exist. *D. Tucker v. United States* (1963, 318 F. 2d 221, 115 U.S. App. D.C. 250).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

Any error in submitting lesser included offense of manslaughter in prosecution on charge of first degree murder was not prejudicial when a verdict of manslaughter was not returned. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Failing to instruct that jury might return a second degree murder verdict, was not error, in a felony-murder prosecution, where accused and his brother robbed a store proprietor, accused took some money and fled, and in immediate close and continuous pursuit, police officers followed accused up to instant of killing of one of the officers by accused. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

#### 19. Jury

Evidence in homicide prosecution on issue of defendant's defense of insanity was for jury. *E. E. Turberville,*

*B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence, in felony-murder prosecution, presented jury question as to whether there was such an "arrest" of accused prior to killing of an officer, as to break essential link between the robbery and the killing, and such issue was properly submitted to jury under instructions explaining the issue and what constituted arrest. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

#### 23.50. Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

#### 24. Prejudicial error

In prosecution of three defendants for homicide, request by counsel for one defendant that jury return lesser verdict than that charged in indictment was not prejudicial to another defendant who persistently denied any participation in offense, in view of subsequent instructions that evidence be considered separately as to each defendant and defendant's failure to object to such remarks. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

#### 35. Verdict

It was within prerogative of jury to acquit, on a felony-murder charge, a codefendant who was not present at scene of the killing, and to return a verdict of guilty of felony-murder as to defendant, even though both defendants were found guilty of the same robbery and even though jury could have returned a felony-murder verdict of guilty as to both defendants. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

#### 37. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

### § 22-2402. Murder in the first degree—Placing obstructions upon or displacement of railroad.

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

### § 22-2403. Murder in second degree.

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

### NOTES TO DECISIONS

Generally 1  
Inconsistent verdicts 5.50  
Indictment 6.50  
Instructions 7

#### 1. Generally

With certain statutory exceptions, when there is unjustified intentional killing, not premeditated but with malice, the offense is murder in the second degree and the same is true when there is unintentional killing which results from a willful and malicious act other than those specified in the first degree murder statute. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Where it could not be determined from evidence whether defendant intended to kill or merely wound his victim and it could not be said from record with legal certainty that interval between fight and the killing which followed was or was not of sufficient duration to provide time for premeditation required for first degree murder,



court properly submitted lesser included offense of second degree murder in prosecution under indictment on charge of first degree murder. *Id.*

#### 5.50. Inconsistent verdicts

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

#### 6.50. Indictment

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloniously did murder" named person "by means of shooting him with a pistol". *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

#### 7. Instructions

Jury should be instructed that "mental disease" or "mental defect" includes any abnormal condition of the mind substantially affecting mental or emotional processes and substantially impairing behavior controls. *E. McDonald v. United States* (1962, 312 F. 2d 847, 114 U.S. App. D.C. 120, see also, 284 F. 2d 232, 109 U.S. App. D.C. 98).

Jury may be instructed, if there is testimony on point, that mental capacity or lack of it to distinguish right from wrong and ability to refrain from doing wrong or unlawful act may be considered in determining whether there is relationship between mental disease and act charged. *Id.*

Defendant, who relies on defense of insanity, is entitled to instruction that if acquitted by reason of insanity he will be confined in mental hospital until it is determined that he is no longer dangerous to himself or others, unless it affirmatively appears that defendant does not wish such instruction. *Id.*

Charge, in prosecution for second-degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls v. United States* (1963, 321 F. 2d 762, 115 U.S. App. D.C. 250).

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premeditation and deliberation do not exist. *D. Tucker v. United States* (1963, 318 F. 2d 221, — U.S. App. D.C. —).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

### § 22-2404. Punishment for murder in first and second degrees.

The punishment of murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment; or if the jury, having determined by unanimous vote the guilt of the defendant as charged, is unable to agree as to punishment it shall inform the court and the court shall thereupon have jurisdiction to impose and shall impose either a sentence of death by electrocution or life imprisonment.

Notwithstanding any other provision of law, a person convicted of first degree murder and upon whom a sentence of life imprisonment is imposed shall be eligible for parole only after the expiration

of twenty years from the date he commences to serve his sentence.

Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than twenty years.

Cases tried prior to March 22, 1962, and which are before the court for the purpose of sentence or re-sentence shall be governed by the provisions of law in effect prior to March 22, 1962: *Provided*, That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment. Such a sentence of life imprisonment shall be in accordance with the provisions of this Act.

In any case tried under this Act as amended where the penalty prescribed by law upon conviction of the defendant is death except in cases otherwise provided, the jury returning a verdict of guilty may by unanimous vote fix the punishment at life imprisonment; and thereupon the court shall sentence him accordingly; but if the jury shall not thus prescribe the punishment the court shall sentence the defendant to suffer death by electrocution unless the jury by its verdict indicates that it is unable to agree upon the punishment, in which case the court shall sentence the defendant to death or life imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; Mar. 22, 1962, 76 Stat. 46, Pub. L. 87-423, § 1.)

#### AMENDMENT

Act Mar. 22, 1962, amended section to read as above set out. Prior to this amendment the section read as follows: "The punishment of murder in the first degree shall be death by electrocution. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years."

#### INTERNAL REFERENCES

Act referred to in this section is act of Mar. 22, 1962, and the basic act of Mar. 3, 1901, classified to various parts of this Code (see distribution tables). For other provisions of act Mar. 3, 1901, dealing with crimes which may be punishable by death or imprisonment for life, see sections 22-201, 22-2401 to 22-2403 and 22-2801.

#### CROSS REFERENCE

For other provisions providing minimum sentences upon imposition of life sentence, see § 24-203.

#### NOTES TO DECISIONS

##### 3.50. Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

### § 22-2405. Punishment for manslaughter.

#### NOTES TO DECISIONS

Confession .50  
Instructions 3.50  
Right to counsel 7

##### .50. Confession

Oral, post-preliminary hearing confession which was obtained from defendant while he was held in jail and



before he had secured counsel and which reaffirmed day old confession which was inadmissible because it was procured in violation of rule requiring defendant to be taken before committing magistrate without unnecessary delay was inadmissible. *J. W. Killough v. United States* (1962, 315 F. 2d 241, 114 U.S. App. D.C. 305).

Even though admission of oral post-arraignment confession was reversible error because it was fruit of illegal prearrest confession, Court of Appeals would not set defendant free but reverse and remand for new trial. *Id.*

Oral confession following closely after earlier confession which is inadmissible for violation of rule requiring defendant to be brought before committing magistrate without unnecessary delay gives rise to rebuttable presumption that second is "fruit" of the first. *Id.*

Confession secured from defendant during thirty-four-hour period between his arrest and his appearance before commissioner would be suppressed because of such delay. *United States v. J. W. Killough* (1961, 193 F. Supp. 905).

Any confessions which result from illegal detention, no matter how voluntary or trustworthy, are excluded from evidence. *Id.*

A defendant's second confession, after appearance before a commissioner, following illegal detention, could not be excluded on theory it was product of a deliberate police attempt to subvert Rules of Criminal Procedure, where the confession was made to a police officer who did not approach defendant with purpose of securing a reaffirmation of invalid confessions defendant made prior to appearance before a committing magistrate. *Id.*

#### 3.50. Instructions

Charge, in prosecution for second degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls v. United States* (1963, 321 F. 2d 762, — U.S. App. D.C. —).

#### 7. Right to counsel

Police can interrogate a suspect before giving him an opportunity to secure counsel. *United States v. J. W. Killough* (1961, 193 F. Supp. 905).

Action of an official in allowing a police officer to see defendant during adjournment of a preliminary hearing, but before he had seen counsel was not a violation of the commitment order, the Federal Rules of Criminal Procedure, and the constitutional bar against self-incrimination and guarantee of right to counsel, and did not render admissions made by defendant during such conversation inadmissible. *Id.*

The Rules of Criminal Procedure give an accused who has funds to hire counsel the right to do so, and right to have a preliminary hearing, should he desire one with counsel's assistance, postponed until he secures that assistance.

Constitutional privilege against self-incrimination did not give illegally detained defendant an absolute right to see counsel before a valid confession could be given by him, or to have counsel present with him at time he made a confession. *Id.*

### Chapter 25.—PERJURY

#### § 22-2501. Perjury—Subornation of perjury.

##### NOTES TO DECISIONS

Attorney's oath 2.50  
Predication of indictment 20.50  
Sufficiency of indictment 23.50

#### 2.50. Attorney's oath

Falsely taking oath of admission pursuant to Municipal Court Civil Rule, which states what persons the bar of the Municipal Court should consist of and prescribes oath or affirmation to be taken by such person, violated statute proscribing perjury and subornation of perjury. *Morgan v. United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

#### 20.50. Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

#### 23.50. Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

### Chapter 27.—PROSTITUTION—PANDERING

#### § 22-2701. Prostitution—Inviting for purposes of, prohibited.

##### NOTES TO DECISIONS

Corroboration of evidence 8  
Evidence 4  
Sentence 18.50

#### 4. Evidence

Evidence sustained conviction of soliciting for purpose of prostitution. *R. Golden v. United States* (D.C. Mun. App. 1961, 167 A. 2d 796).

#### 8. Corroboration of evidence

Trial court could properly find defendant guilty of soliciting for lewd and immoral purpose on testimony of officer, uncontradicted as to time and place, that he noticed defendant, dressed in female attire, motioning him to curb, that defendant offered to perform act of perversion for stated amount, corroborated by testimony of another officer who saw defendant conversing with arresting officer, where there was no evidence introduced of defendant's good character or denial that he was dressed in female attire. *H. H. Berneau v. United States* (D.C. App. 1963, 188 A. 2d 301).

Conviction for soliciting another male for a lewd and immoral purpose was based on sufficient corroboration as to time, place and circumstances. *N. H. Alexander v. United States* (D.C. App. 1963, 187 A. 2d 901).

#### 18.50. Sentence

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. *D. Henderson v. United States* (D.C. App. 1963, 189 A. 2d 132).

#### § 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

##### NOTES TO DECISIONS

#### 3.50. Instructions

Where trial court had not reviewed or commented upon evidence in his charge to jury and elements essential to convict were explained without reference to any aspect of evidence and counsel prior to charge failed to formulate desired instruction, refusing oral request that the charge be enlarged to include a specific reference to defendant's theory of the evidence was not reversible error. *C. O. Clarke v. United States* (1962, 301 F. 2d 543, 112 U.S. App. D.C. 219).

#### § 22-2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.

##### NOTES TO DECISIONS

#### 9.50. Fair trial

Defendants were not denied fair trial in prosecutions for violating Mann Act and for receiving money for arranging for acts of prostitution, because of actions of trial court and Assistant United States Attorney. *J. A. Fabianich and M. E. Fabianich v. United States* (1962, 302 F. 2d 904, 112 U.S. App. D.C. 319).

Sentences were valid, though trial court allegedly erred in denying motions for acquittal on certain counts, where



there were concurrent sentences, and convictions under other courts were not challenged. *Id.*

#### § 22-2722. Keeping bawdy or disorderly houses.

Whoever is convicted of an affray or of keeping a bawdy or disorderly house in the District shall be fined not more than \$500 or imprisoned not more than one year, or both. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a).)

##### AMENDMENT

1963—Section 11(a) of act Dec. 23, 1963, amended section to read as above set out, effective Jan. 1, 1964.

##### NOTES TO DECISIONS

Arrest 2  
Disorderly house 3.50  
Evidence 4

##### 2. Arrest

Affidavits supporting application for warrant for arrest for operation of disorderly house alleged sufficient facts to establish probable cause for arrest. *W. H. Wood and M. J. Blue v. United States* (D.C. Mun. App. 1962, 183 A. 2d 563).

Where apparent facts set out in affidavits supporting application for warrant for arrest are such that reasonably discreet and prudent man would be lead to believe that offense charged was committed, there is probable cause justifying issuance of warrant; determination whether offense has been committed or evidence tendered is so strong as to justify ultimate conviction is not necessary. *Id.*

Parade of males into defendant's apartment and her past criminal record as convicted madam and vagrant provided adequate justification for issuance of warrant for arrest resulting in prosecution for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

##### 3.50. Disorderly house

"Disorderly house" is one where acts are performed which tend to corrupt morals of community or promote breaches of peace. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Elements necessary to sustain conviction for maintaining disorderly house are that acts are contrary to law and subversive of public morals, that house is commonly resorted to for commission of such acts, and that proprietor knows, or should in reason, know facts and either procures it to be done, connives at it, or does not prevent it. *Id.*

Conduct sufficient to sustain conviction for maintaining disorderly house need not disrupt peace and quiet or be open to public observation so long as it would be offensive to public sensibilities if its presence in community were generally known. *Id.*

##### 4. Evidence

Registration cards seized in search of tourist home in connection with arrest for operating it as disorderly house were admissible as having direct bearing upon the operation. *W. H. Wood and M. J. Blue v. United States* (D.C. Mun. App. 1962, 183 A. 2d 563).

Use of chart, which was not admitted as exhibit or taken to jury room, in connection with testimony concerning registration cards taken from tourist home allegedly used as disorderly house, in order that jury could more conveniently view, during trial, information on cards, was not prejudicial. *Id.*

Evidence supported conviction for operating as a disorderly house a tourist home to which constant stream of couples came, especially late at night, on foot, in taxis, or by private automobile, without luggage and in many instances oddly dressed and at which they stayed for brief periods not exceeding two and one-half hours. *Id.*

Evidence sustained conviction for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

Evidence sustained conviction of maintaining disorderly house. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Testimony on single act of prostitution in house and unlawful sales prior to period specified in information were admissible in prosecution for maintaining disorderly house. *Id.*

## Chapter 28.—RAPE

### § 22-2801. Definition and penalty.

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

#### NOTES TO DECISIONS

Corroboration of evidence 11  
Evidence—Suppression 15.50  
Impeachment 13.50  
Prejudicial remarks 20.50

##### 11. Corroboration of evidence

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

##### 13.50. Impeachment

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

##### 15.50. Evidence Suppression

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

##### 20.50. Prejudicial remarks

In prosecution for rape and housebreaking, prosecutor's remark to jury as to defendant's objection to admission of hospital records of physical examination of prosecutrix was improper and required new trial where records were not admitted and examination in fact showed no evidence of rape, and thus any possible or probable implication to jury that such records would be damaging to defendant was misleading. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

## Chapter 29.—ROBBERY

### § 22-2901. Robbery.

#### NOTES TO DECISIONS

Assistance of counsel 1  
Burden of proof 8  
Cross-examination 3.50  
Elements of offense 6  
Evidence—Admissibility 7  
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"Person" defined 19.50  
Prejudicial error 19.51  
Production of evidence 10  
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Question for jury 22  
Sentence 26  
Sufficiency of evidence 11  
Suppression of evidence 12

##### 1. Assistance of counsel

Failure of United States Commissioner to assign counsel to defendant at preliminary proceeding and use at trial of testimony that defendant had confessed to police after the preliminary hearing had been continued for four weeks could not serve as a basis for reversal of conviction where neither point had been raised in district court, no objection had been made upon introduction of the defendant's oral confession, and no relief had been asked below. *L. Moon, Jr. v. United States* (1963, 317 F. 2d 544, 115 U.S. App. D.C. 133).

##### 3.50. Cross-examination

Cross-examination of defendant's wife, concerning her alleged statements to officers, although she had said nothing of these matters on direct examination and they



did not directly challenge her direct testimony, was not proper on any ground and required reversal, despite sufficiency of other evidence and lack of objection, and was not cured by instruction that testimony could be considered only on question of wife's credibility. *C. Dixon v. United States* (1962, 303 F. 2d 226, 112 U.S. App. D.C. 366).

#### 6. Elements of offense

Robbery conviction requires proof of taking from person of another by sudden or stealthy seizure or snatching, or by putting in fear. *G. R. Hunt v. United States* (1963, 316 F. 2d 642, 115 U.S. App. D.C. 1).

#### 7. Evidence—Admissibility

Evidence that defendant, who was charged with robbery, at time of his apprehension had in his possession an automobile driver's license bearing a name other than his own was irrelevant, but admission of such evidence did not require a reversal when jury trial was waived and evidence of guilt was strong. *L. Fennel v. United States* (1963, 320 F. 2d 784, — U.S. App. D.C. —).

#### 8. Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey v. United States* (1961, 296 F. 2d 422, 111 U.S. App. D.C. 300).

#### 10. Production of evidence

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement made to the police, and when prosecutor indicated he did not have the statement court told counsel to ask policeman for the statement when he "takes the stand," such action was error since the statute requires production of witness' statement for use in his cross-examination, and court by its action required defendant's counsel to proceed with cross-examination of witness without it. *W. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement made to police, error in instructing counsel to ask policeman for statement when he "takes the stand" was harmless where when policeman took the stand entire police file was produced and made available to defense counsel, and after counsel read the file, the matter of the statement was not pursued. *Id.*

#### 11. Sufficiency of evidence

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon v. United States* (1963, 318 F. 2d 223, 115 U.S. App. D.C. 252).

Evidence sustained conviction for robbery. *R. X. Williams v. United States* (1963, 321 F. 2d 744, — U.S. App. D.C. —).

#### 12. Suppression of evidence

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

#### 15.50. Inconsistent verdicts

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

#### 17. Instructions

Instruction in robbery prosecution, wherein there was no direct evidence that complaining witness' wallet had been stolen but witness testified that he had felt a slight jostle and had been told that two people were running down street, that verdict would be relatively simple to arrive at once jury decided which of witnesses were telling truth, was plain error requiring reversal, there being no

instruction that different inferences might be drawn from complaining witness' testimony even if it were believed. *L. C. Miller, Jr. v. United States* (1963, 320 F. 2d 767, — U.S. App. D.C. —).

Had defendant, who was charged with taking billfold from pocketbook, but who, upon search conducted immediately after alleged robbery, was not found to have billfold, requested charge on lesser included offense of attempted robbery, its denial would have been reversible error, but failure to give instruction was not plain error. *R. X. Williams v. United States* (1963, 321 F. 2d 744, — U.S. App. D.C. —).

Failure to give instruction on circumstantial evidence to effect that unless there is substantial evidence of facts which exclude every reasonable hypothesis but that of guilt, verdict must be not guilty was not plain error in robbery case. *Id.*

Instructions which may have implied that jury could infer guilt from circumstances without first resolving conflicts in testimony over whether circumstances had actually occurred were not plain error in view of charge considered as whole. *Id.*

#### 19. New trial

Since evidence was sufficient to raise jury issue as to robbery, new trial, ordered because of trial court's error in refusing to instruct jury on lesser included offense of larceny, would not be limited to larceny charge only. *E. A. Graves v. United States* (1963, 318 F. 2d 265, 115 U.S. App. D.C. 294).

#### 19.50. "Person" defined

Victim of homicide, even though dead, was "person" within robbery statute under circumstances where time interval between stabbing and taking of money from her body was short, and even if intent of taking money did not occur until after she was dead perpetrator could properly be convicted of robbery. *H. S. Carey v. United States* (1961, 296 F. 2d 422, 111 U.S. App. D.C. 300).

#### 19.51. Prejudicial error

Denial of motion of defendant that court obtain assistance of medical expert to examine witness, who identified defendant as robber, and who allegedly had defective eyesight, and to testify concerning vision of witness was not prejudicial error, where matter of vision of witness was adequately explored on cross-examination, and there was other strong identifying testimony. *E. G. Robinson v. United States* (1963, 318 F. 2d 272, 115 U.S. App. D.C. 301).

#### 20.50. Pre-sentence investigation

Imposition of maximum sentence just after guilty verdicts were rendered against defendants, one of whom was 21 years of age and the other 19 years of age, was improper, vacation of sentences at suggestion of United States and reimposition thereafter of same sentences was not curative of procedure followed, sentences must be vacated and pre-sentence investigation must be made with opportunity to present information in mitigation of punishment. *Peters and Mills v. United States* (1962, 307 F. 2d 193, 113 U.S. App. D.C. 236).

#### 22. Questions for jury

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins v. United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

Evidence upon question whether defendant was not guilty of robbery by reason of insanity was sufficient to raise jury question. *E. C. Campbell v. United States* (1962, 307 F. 2d 597, 113 U.S. App. D.C. 260).

#### 26. Sentence

Where at time of sentence upon robbery conviction defendant stated to court that he was "under a psychiatrist for one year" in 1935, that he "had a mental disorder from 1952," that he was "under a doctor in the state prison at Trenton" in 1952, and that all but 63 days of the past 31 years, since he was 19 years old, he had spent in various prisons, and court imposed the maximum



penalty without responding to defendant's request for a mental examination prior to sentence, case would be remanded to district court for reconsideration of the sentence. *Wm. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

On remand for consideration of sentence, district court refused to disturb sentence previously imposed on defendant, who has extensive criminal record, following a third conviction for armed robbery, in view of probation office report failing to refer defendant to legal psychiatric services and recommending that probation be denied and evidence which failed to indicate that defendant was suffering from mental disease. *United States v. W. H. Leach* (1963, 218 F. Supp. 271).

## Chapter 31.—TRESPASS—INJURIES TO PROPERTY

### § 22-3102. Unlawful entry on property.

#### NOTES TO DECISIONS

Abuse of discretion .50  
Diplomatic immunity .51  
Reasonable cause for arrest 6

#### .50. Abuse of discretion

Record did not disclose abuse of discretion in denial of defendants' motion for new trial in prosecution for unlawful entry. *A. Fatemi et al. v. United States* (D.C. App. 1963, 192 A. 2d 525).

#### .51. Diplomatic immunity

District of Columbia police had authority to enter embassy and arrest foreign nationals, who had no claim to immunity and who were violating local law by trespassing in embassy, at Minister's request. *A. Fatemi et al. v. United States* (D.C. App. 1963, 192 A. 2d 525).

#### 6. Reasonable cause for arrest

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith v. United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

### § 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

#### NOTES TO DECISIONS

Prosecutions by United States Attorney 3.50  
Variance in proof 5

#### 3.50. Prosecutions by United States Attorney

United States Attorney for District of Columbia rather than Corporation Counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. *District of Columbia v. Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

#### 5. Variance in proof

There was no fatal variance between information charging defendant with defacing doors of elevator in private building by drawing, marking and writing sign or figure thereon and proof which showed that defendant, who did not ask for any further particulars, put stickers on door. *J. Patler, etc. v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 508).

## Chapter 32.—WEAPONS

### § 22-3204. Carrying concealed weapons.

#### NOTES TO DECISIONS

Construction with other laws 4  
Illegal search 9.50  
Search and seizure 19.50  
Sentences 21  
Probable cause for arrest 22

#### 4. Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license \* \* \* or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "any-

where" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. *United States v. J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

#### 9.50. Illegal search

Impounding of automobile, which motorist had parked in front of police station after being ordered to follow police officers to police precinct, was not authorized under regulation permitting impounding of unattended vehicles found parked in violation of traffic regulation, and pistol discovered in search of automobile was not admissible. *D. A. Williams v. United States* (D.C. Mun. App. 1961, 170 A. 2d 233).

#### 19.50. Search and seizure

Police, who received information that there had been a holdup and robbery of a motel and who saw defendant, who was wearing outer clothing fitting description of one of robbers, in a restaurant in vicinity in company of a known felon, and who observed a bulge under defendant's shirt resembling a pistol, had probable cause to arrest and search defendant, and pistol discovered in course of search was admissible in prosecution on charge of carrying a pistol. *T. A. Teresi v. United States* (D.C. App. 1963, 187 A. 2d 492).

Removal of unlicensed pistol from floor of parked automobile did not constitute an unreasonable search and seizure where officer, who discovered pistol lying in plain view on automobile floor, was making an investigation at scene of reported burglary and after noticing defendant's keys in ignition in violation of law had opened automobile door to remove keys. *C. A. Campbell v. United States* (D.C. Mun. App. 1961, 174 A. 2d 87).

#### 21. Sentences

Determination of whether evidence was sufficient to sustain conviction for carrying a dangerous weapon without a license would not be made where defendant was convicted upon sufficient evidence of a different offense and sentences imposed upon defendant for the two offenses ran concurrently. *J. Hart v. United States* (D.C. App. 1963, 187 A. 2d 329).

#### 22. Probable cause for arrest

Officer had probable cause to believe that housebreaking had been committed and that defendant was offender, so as to justify arrest without warrant in course of which was discovered a pistol giving rise to prosecution for carrying weapon without license, in view of strong belief communicated to officer by one who knew defendant that defendant was one who had broken into such individual's mother's home, and in view of officer's observation and other information he learned from both such individual and defendant, and accordingly pistol was admissible in evidence. *J. E. Paris v. United States* (1963, 321 F. 2d 378, — U.S. App. D.C. —).

There is a difference between what is required to prove guilt in criminal case and what is required to show probable cause for arrest or search, and, in dealing with probable cause, court deals with probabilities, they are not technical but are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Id.*

### § 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

#### NOTES TO DECISIONS

#### 1. Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license \* \* \* or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the



possession of dangerous weapons and each has distinctive objects of correction. *United States v. J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

### Chapter 33.—VAGRANCY

#### § 22-3302. "Vagrants" defined.

##### NOTES TO DECISIONS

Admissibility of evidence 8  
 Authority of police officer 1  
 Evidence 7  
 Lawful means of support 13  
 Nature of vagrancy 14  
 Purpose 16  
 Sufficiency of evidence 11

##### 1. Authority of police officer

That, within period of about three weeks, defendant on four occasions at late hours was observed in downtown area many blocks from home, on one occasion was talking to male in dark alley, on another was walking in parking lot, on another was in company of known prostitute, and on another was in company of convicted felon, gave reasonable ground for officer's belief that her presence on streets was not for any legitimate purpose and was sufficient justification for calling upon her to account for her actions and for her arrest where she failed to do so. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

That defendant was in taxicab when officer stopped her and was not then wandering about streets did not preclude him from stopping her and questioning her, where it could be inferred that hailing and boarding cab were part of effort to avoid questioning by police. *Id.*

A person found loitering has duty to give a good account of himself. *C. H. Kelley v. United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

##### 7. Evidence

Evidence was insufficient to sustain vagrancy conviction. *E. R. Harris v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 359).

Evidence sustained conviction of being a vagrant. *Y. Pinkney v. District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 198).

##### 8. Admissibility of evidence

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman v. United States* (1963, 322 F. 2d 426, — U.S. App. D.C. —).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation. *Id.*

For purposes of showing a continued course of immorality in vagrancy prosecution, prior acts and admissions of defendant showing defendant's acts to be part of a continuous operation were properly admitted. *G. Coley etc. v. District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

Evidence sustained finding of habitually immoral conduct on part of defendant and sustained conviction for vagrancy. *Id.*

##### 11. Sufficiency of evidence

Evidence sustained vagrancy conviction. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

Vagrancy conviction cannot stand without evidence of course of conduct or mode of living or status prejudicial to public welfare. *B. Drew v. District of Columbia* (D.C. App. 1963, 187 A. 2d 325).

Evidence did not sustain conviction of vagrancy, absent evidence of course of conduct or mode of living or status prejudicial to public welfare. *Id.*

Evidence was insufficient to prove elements necessary to support conviction for vagrancy under District of Colum-

bia code denominating as vagrants persons leading immoral life and who have no lawful employment or lawful means of support and persons who operate or who are employed in houses of ill fame. *Baker and Fredricksen v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 198).

##### 13. Lawful means of support

Burden of defendants, charged with vagrancy, or proving lawful means of support does not arise until prosecution has proven other elements of offense. *Baker and Fredricksen v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 198).

##### 14. Nature of vagrancy

"Vagrancy" consists of a continued course of immorality, a pattern in iniquity, rather than a solitary incidence of wrong-doing. *G. Coley etc. v. District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

##### 16. Purpose

Purpose of vagrancy statute is to prevent crime likely to flow from vagrant's mode of life, and if officer were precluded from arresting thereunder until crime was committed, its purpose would wholly fail. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

#### § 22-3304. Penalty—Conditions imposed by court.

##### NOTES TO DECISIONS

##### 1. Indigent prisoners, discharge of

Sentence for violation of District of Columbia vagrancy statute was for violation of "law of United States" within Indigent Prisoners' Act authorizing indigent prisoner, who has been sentenced for violation of any "law of United States," and who has been imprisoned for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *D. C. Clemmer, Director, Department of Corrections etc. v. N. H. Alexander* (1961, 295 F. 2d 176, 111 U.S. App. D.C. 210).

Municipal Court of District of Columbia is "court established by enactment of Congress" within Indigent Prisoners' Act authorizing indigent prisoner who has been imprisoned by "court established by enactment of Congress" for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *Id.*

### Chapter 34.—MISCELLANEOUS

##### Sec.

22-3401. Omitted.

22-3402. Repealed.

22-3403. Repealed.

22-3423. Use by private detective or collection agencies, of the words "District of Columbia", "District", the initials "D.C." to create impression that agency represents the District, is prohibited.

22-3424. Penalty for violation of section 22-3423.

22-3425. Prosecutions for violations of section 22-3423—Corporation counsel defined.

##### § 22-3401. Omitted.

Sec. act Leg. Assembly, Aug. 23, 1871, p. 96, ch. 69, § 21, defined a "Gift enterprise". Since act Sept. 21, 1961, Pub. L. 87-267, § 1, repealed sections 22-3402 and 22-3403 which made it unlawful to engage in a "gift enterprise" business and imposed certain penalties for so doing, this section is now obsolete and is therefore omitted.

§§ 22-3402, 22-3403. Repealed. Sept. 21, 1961, 75 Stat. 565, Pub. L. 87-267, § 1.

Section R.S., D.C., § 1176, made it unlawful to engage in a gift enterprise as defined in section 22-3401.

Section R.S., D.C., § 1177, imposed penalties for engaging in any gift-enterprise business in the District.

§ 22-3407. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87-581, § 203.

Section act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 892, fixed the hours of work for laborers and mechanics on public works.

The repealing act also provided that the provisions of the repealed statutes shall continue to apply with respect to contracts existing on the effective date of the repealing

act or entered into pursuant to invitations for bids outstanding at the time of enactment of repealing act.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

#### CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see title 40, §§ 327 to 332, and title 5, § 673c, of the U.S. Code.

§ 22-3408. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87-581, § 203.

Section of act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 893, prescribed the penalties for violation of section 22-3407.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

§ 22-3423. Use, by private detective or collection agencies, of the words "District of Columbia", "District," the initials "D.C.," to create impression that agency represents the District, is prohibited.

No person engaged in the business of collecting or aiding in the collection of private debts or obligations, or engaged in furnishing private police, investigation, or other private detective services, shall use as part of the name of such business, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the words "District of Columbia", "District", the initials "D.C.", or any emblem or insignia utilizing any of the said terms as part of its design, in such manner as reasonably to convey the impression or belief that such business is a department, agency, bureau, or instrumentality of the municipal government of the District of Columbia or in any manner represents the District of Columbia. As used in this section and section 22-3424, the word "person" means and includes individuals, associations, partnerships, and corporations. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 1.)

§ 22-3424. Penalty for violation of section 22-3423.

Any person who violates section 24-3423 shall be punished by a fine of not more than \$300 or by imprisonment for not more than ninety days, or by both such fine and imprisonment. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 2.)

§ 22-3425. Prosecutions for violations of section 22-3423—Corporation Counsel defined.

All prosecutions for violations of section 22-3423 shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in this section the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the

functions prescribed for the Corporation Counsel in this section. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 3.)

## Chapter 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts—Children.

#### NOTES TO DECISIONS

##### 13. Review

Shortcomings that attended conduct of a preliminary hearing did not, under the circumstances, infect case with error which invalidated judgment of conviction based on valid indictment returned against defendant, nor was the judgment of conviction invalidated by police misbehavior in view of fact conviction was reached entirely apart therefrom. *W. L. Gilliam v. United States* (1963, 323 F. 2d 615, — U.S. App. D.C. —).

§ 22-3502. Sodomy.

#### NOTES TO DECISIONS

##### REVIEW

Record on appeal from sodomy conviction, challenged on grounds of sufficiency of evidence presented by government, revealed no error affecting substantial rights of accused. *W. Hehl v. United States* (1960, 288 F. 2d 131, 109 U.S. App. D.C. 346).

§ 22-3503. Definitions.

#### NOTES TO DECISIONS

##### 1.50. Construction

"Injury" within statute defining sexual psychopath as person who has evidenced such lack of power to control sexual impulses as to be dangerous to persons because he is likely to attack or otherwise inflict injury, loss, pain or other evil, includes injury to feelings and "pain" includes mental suffering. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

§ 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

#### NOTES TO DECISIONS

Bail 1.50  
Confinement 2  
Evidence—Sufficiency 3.50

##### 1.50. Bail

Trial court has power to permit one adjudged sexual psychopath to remain at liberty on bond pending appeal. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183, A. 2d 393).

Question of right of defendant adjudged to be sexual psychopath to bail pending appeal was moot, where case was in reviewing court and ready for disposition adverse to defendant on merits so that no practical relief could be given as to bail.

##### 2. Confinement

Notwithstanding psychiatrists' report and testimony of one psychiatrist to effect that defendant, arrested for indecent exposure, would not physically attack any one in any manner, in view of fact defendant had twice before been committed for similar offenses, defendant was properly committed as sexual psychopath. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

##### 3.50. Evidence—Sufficiency

Evidence sustained finding that defendant arrested for indecent exposure was sexual psychopath. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).





## TITLE 23.—CRIMINAL PROCEDURE

### Chapter 1.—GENERAL PROVISIONS

#### § 23-101. Conduct of prosecutions—Party plaintiff.

##### NOTES TO DECISIONS

##### 4. Prosecution by United States Attorney

United States Attorney for District of Columbia rather than corporation counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. *District of Columbia v. Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

#### § 23-102. Conduct of prosecutions—Certification to Court of Appeals.

##### NOTES TO DECISIONS

##### 1. Certification by judge

Where question as to proper prosecuting authority as between District of Columbia Corporation Counsel and United States Attorney is raised, the court must certify question to Court of Appeals for District of Columbia, and Municipal Court of Appeals was required to reverse action of Municipal Court in dismissing informations brought by Corporation Counsel after ruling that United States Attorney was proper prosecuting authority and the court would remand with instructions to reinstate informations and to certify questions to Court of Appeals. *District of Columbia v. Moody, Hill & Hamilton* (D.C. Mun. App. 1961, 175 A. 2d 782).

#### § 23-103. Repealed. Dec. 23, 1963, 77 Stat. 623, Pub. L. 8-241, § 21, effective Jan. 1, 1964.

Section, act Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934, as amended, dealt with prosecutions in the United States District Court and the Municipal Court [now the Court of General Sessions]. See sections 11-521 and 11-963.

#### § 23-105. Appeals by United States and District of Columbia.

##### NOTES TO DECISIONS

##### 4. Double jeopardy

Dismissal of embezzlement prosecution for "want of prosecution" was not equivalent to a finding that defendant had been denied his constitutional right to speedy trial. *J. P. Mann v. United States* (1962, 304 F. 2d 394, 113 U.S. App. D.C. 27).

#### § 23-106. Bail—Deposit—Forfeiture.

##### NOTES TO DECISIONS

##### 2. Excessive bail

Requiring defendant, convicted of traffic violation for which \$5 fine was imposed, to post \$200 bail bond pending appeal, was improper. *H. W. Starr v. District of Columbia* (D.C. Man. App. 1962, 176 A. 2d 878).

Amount of bail must bear some reasonable relation to purpose for which it is given. *Id.*

#### § 23-107. Peremptory challenges.

##### NOTES TO DECISIONS

##### 4. Joint defendants

Defendant was not entitled to three peremptory challenges in selecting jury, in addition to those allowed

codefendant; the defendants were properly treated as one defendant in allowance and exercise of challenges. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

### Chapter 3.—SEARCH WARRANTS AND ARREST

#### § 23-301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

##### NOTES TO DECISIONS

Probable cause 8  
Search—Validity 10  
Validity of search 10

##### 8. Probable cause

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Allegations in affidavits upon basis of which a search warrant was issued, to the effect, among other things, that certain drugs were delivered to a certain person in a certain apartment, were sufficient to create probable cause and justify issuance of search warrant for items described. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

##### 10. Search—Validity

Defendant, allegedly a known felon, was under unlawful arrest when he answered officers' call to come out of restaurant although he had been committing no offense, not even loitering, and evidence then produced on demand that he reveal content of pocket was unlawfully seized. *C. H. Kelley v. United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

Items not described in a search warrant but discovered in course of search made pursuant to such warrant were admissible in evidence. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

When a lawful search is executed pursuant to a lawful search warrant, contraband may be seized although not specifically described in the warrant. *Id.*

Premises under control of a person arrested may be searched contemporaneously as an incident to the arrest, and material seized as a result of such search may be introduced in evidence, even though not described in a search warrant. *Id.*

##### 10. Validity of search

Where two plain-clothes men and complaining witness went to defendant's home with intention of making a search, if possible, for stolen goods and not to talk with him about reports of his possible involvement in three robberies, seizure of stolen property found in apartment was not incident to lawful arrest and was unlawful and could not be justified by exceptional circumstances and fruits of search were inadmissible in criminal prosecution. *United States v. E. E. Evans* (1961, 194 F. Supp. 90).

Defendant's invitation to "come on in" made to two plain-clothes men and complaining witnesses did not constitute a consent to search of apartment, and defendant did not waive any right to complain that search violated the Fourth Amendment. *Id.*



## Chapter 6.—PROFESSIONAL BONDSMEN

§ 23-608. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act—Detailed records to be kept—Penalties and disqualifications.

## NOTES TO DECISIONS

## 2.50. Moral turpitude

"Moral turpitude", within statute precluding licensing as a bondsman a person convicted of any offense involving moral turpitude, includes crimes in which fraud was an ingredient. *In the Matter of Nathaniel Madden* (D.C. Mun. App. 1962, 184 A. 2d 204).

Conviction of an offense involving moral turpitude precludes qualification for licensing of a bondsman, and courts have no latitude or discretion in the matter. *Id.*

Conviction for fraudulent filing of Federal income tax returns was conviction of an offense involving "moral turpitude," within statute precluding licensing as a bondsman a person convicted of an offense involving moral turpitude. *Id.*

## Chapter 8.—OUT-OF-STATE WITNESSES

§ 23-802. Hearing on recall of out-of-State witnesses by State courts—Determination—Travel allowance—Penalty.

## NOTES TO DECISIONS

## 1. Hearing mandatory

Under Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings, it is mandatory that a hearing be had and a determination made as to whether witness is material and necessary, and that it will not cause undue hardship to witness to be compelled to attend and testify, and the certificate is prima facie evidence of all facts stated therein. *United States ex. rel. State of Pennsylvania v. J. M. McDevitt* (D.C. App. 1963, 195 A. 2d 741).

In proceeding to issue process to require a person to return as a witness to testify before investigating grand jury in Pennsylvania, evidence supported findings that it was not established that person was material and necessary witness or that compelling his attendance would not cause him undue hardship, and hence denial of application was not an abuse of discretion. *Id.*

## TITLE 24.—PRISONERS AND THEIR TREATMENT

### Chapter 1.—PROBATION

#### § 24-101. Probation system—Probation officers—Appointment.

##### NOTES TO DECISIONS

##### 1.50. Sentencing procedure

In sentencing, the judge must consider a program of rehabilitation designed to preclude, so far as current learning can furnish a guide, a repetition of the crime, and to such end Congress has placed several aids at disposal of judge, including provisions for presentence investigation, for commitment prior to sentence to a hospital for examination to determine mental competence of the offender, and for appointment of psychiatrist and psychologist. *Wm. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

#### § 24-102. Repealed. Dec. 23, 1963, 77 Stat. 626, Pub. L. 88-241, § 21, effective Jan. 1, 1964.

Section of act June 25, 1910, 36 Stat. 864, ch. 433, § 2, dealt with the authority of the United States District Court for the District of Columbia and the former Municipal Court to place certain convicted offenders on probation. The section insofar as it related to the United States District Court was repealed by act June 25, 1958, 72 Stat. 216, Pub. L. 85-463, § 2. The surviving provisions of the section are now reenacted as section 16-710.

### Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

#### § 24-203. Imposition of indeterminate sentences authorized—Life and death sentences.

##### NOTES TO DECISIONS

##### 8. Sentences

Prospect of having conviction "automatically" set aside under Youth Corrections Act was a difference so important as to outweigh possibility of longer confinement and to warrant conclusion that second sentence, of thirty-four months to one hundred and two months, under Indeterminate Sentence Law, was more severe than first sentence, of three to nine years, under Youth Corrections Act, for robbery; and, accordingly, second sentence, entered on motion to correct, was invalid where offender had already begun to serve first sentence. *E. J. Tatum v. United States* (1962, 310 F. 2d 854, 114 U.S. App. D.C. 49).

#### § 24-206. Revocation of parole after retaking—Hearing—New parole.

##### NOTES TO DECISIONS

##### Appearance and hearing 1

##### Good time allowance 6.50

##### Right to counsel 10

##### Sentence upon reimprisonment 12

##### 1. Appearance and hearing

Alleged parole violator was entitled to present testimony of witnesses appearing voluntarily. *G. J. Reed, Chairman, U.S. Board of Parole et al. v. L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

##### 6.50. Good time allowance

Where prisoner, who was sentenced for violation of District of Columbia Code and transferred to federal penitentiary at Leavenworth, was later conditionally released and placed under supervision of United States Board of Parole at Washington, D.C., but was later taken into custody on a warrant issued by United States Board of Parole for violation of conditions of his release and transferred to a penal institution operated by District of Columbia, prisoner after recommitment accumulated good time at rate of six days per month as fixed by District of Columbia Code and not at rate of eight days per month

as was the case when he was confined in federal penitentiary. *G. P. Clokey v. U.S. Parole Board et al.* (1962, 310 F. 2d 86, U.S. App. 4th Ct.).

##### 10. Right to counsel

Alleged parole violator was entitled to counsel at hearing. *G. J. Reed, Chairman, U.S. Board of Parole et al. v. L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

##### 12. Sentence upon reimprisonment

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *E. Bates v. H. F. Rivers, Executive etc.* (1963, 323 F. 2d 311,—U.S. App. D.C.—).

### Chapter 3.—INSANE CRIMINALS

#### § 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

##### NOTES TO DECISIONS

##### Acceptance of guilty plea .50

##### Burden of proof 1.50

##### Burden of proof after commitment 2

##### Certification of sanity 3

##### Commitment procedure 4

##### Competency to stand trial 5

##### Constitutionality 7

##### Construction 7.50

##### Defense of insanity 8.50

##### Discretion of court 10

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##### Findings 12.50

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##### Habeas corpus 13

##### Hearing 13.50

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##### Jurisdiction to commit 16.50

##### Potentially dangerous 20

##### Prejudicial cross-examination 20.50

##### Pretrial mental examination 22

##### Psychiatrist's report 23.50

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##### Purpose 25

##### .50. Acceptance of guilty plea

Where psychiatrist's report on defendant's competency to stand trial on bad check charge had included statement that defendant's crimes were product of specified mental disease particularly affecting financial judgment and that defendant required further treatment to insure against repetition of the offenses, court properly refused to accept plea of guilty and proceeded to trial to determine that defendant was not guilty by reason of insanity, though defendant had been judicially declared competent to stand trial and to assist in his own defense. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).

##### 2. Burden of proof after commitment

Burden rests with party seeking commitment of accused to mental institution to prove that accused is then of unsound mind. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 307 U.S. 618, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Once a man has been committed to a hospital after verdict of not guilty by reason of insanity, government need not thereafter be forced to prove his insanity as price of continuing treatment. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).



## 3. Certification of sanity

Mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

One who had been found not guilty by reason of insanity and committed to mental hospital could not be detained in hospital beyond period of maximum sentence possible for the offense charged, because of "sociopathic personality" which was not sufficient basis for a civil adjudication of mental incompetency, even if such condition tended to make him an habitual petty criminal. *Id.*

Fact that a person is an habitual petty criminal could not subject him to permanent incarceration in criminal ward of mental institution, and such disposition may not be used as a substitute for laws dealing expressly with habitual criminals. *Id.*

## 4. Commitment procedure

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

## 5. Competency to stand trial

Competency to stand trial depends on whether defendant understands nature of proceedings against him and is properly able to assist in his own defense. *United States v. H. L. Womack* (1962, 211 F. Supp. 578).

## 7. Constitutionality

District of Columbia statute requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. *J. L. Foller v. W. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

## 7.50. Construction

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be ordered by court to be confined in hospital for mentally ill forecloses trial judge from exercising any discretion and does not require finding by trial judge, jury, or medical board as to accused's mental health on date of judgment of acquittal. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be confined in hospital for mentally ill is applicable only to defendant who affirmatively relies upon defense of insanity in any way and such defense need not be asserted by formal plea, but statute does not apply to one who has maintained that he was mentally responsible when alleged offense was committed. *Id.*

Accused, who did not claim that he had been insane when offenses were committed and who presented no evidence to support an acquittal by reason of insanity, was not properly confined in hospital for mentally ill upon finding of trial judge that he was not guilty on ground that he was insane at time of commission of offenses. *Id.*

Statutory construction confining itself to bare words of statute is dangerous in that literalness may strangle meaning. *Id.*

Statute should be interpreted, if fairly possible, in such way as to free it from not insubstantial constitutional doubts. *Id.*

## 8.50. Defense of insanity

Defendant has burden of proving his defense of insanity. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'g 307 F. 2d 618).

## 10. Discretion of court

Record failed to establish that district court abused its discretion in denying application for conditional release, under statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based on certificate of super-

intendent of hospital in which applicant was confined. *M. W. Durnham v. United States* (1962, 308 F. 2d 332, 113 U.S. App. D.C. 377).

Under statute requiring appropriate certificate of superintendent of mental hospital as a condition precedent to release of person committed, court may not substitute its own judgment for that of superintendent and may not try the matter de novo in habeas corpus proceeding, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

Court may step in to determine whether action or failure to act on part of superintendent of mental hospital is arbitrary and capricious. *Id.*

## 10.50. Due process

To require defendant to assume burden of proof on issue of insanity does not violate due process. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 288 F. 2d 618).

## 12.50. Findings

Absence of findings relating reason for denial of habeas corpus petitioned for by one committed to mental hospital to mental hospital following acquittal by reason of insanity required reviewing court to retain jurisdiction and remand to give District Court opportunity to amplify record to set forth such reasons. *J. A. Whittaker v. W. Overholser Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

## 12.51. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

## 13. Habeas corpus

Evidence disclosed that petitioner seeking habeas corpus was receiving psychiatric treatment during his confinement in hospital following acquittal by reason of insanity. *J. L. Foller v. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

Evidence disclosed that director of hospital, to which petitioner had been committed following his acquittal by reason of insanity, was not arbitrary in refusing discharge. *Id.*

## 13.50. Hearing

If District Court were to find that habeas corpus petition filed by one committed to mental hospital following acquittal by reason of insanity, which, together with return, presented factual issue, was not procedurally premature, court was to grant hearing on question of eligibility for release under statute. *J. A. Whittaker v. Overholser, Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

Habeas corpus petition filed by one who was confined to hospital following acquittal by reason of insanity, alleging that he was free from named mental conditions, of sound mind and not dangerous to himself or society, together with return, presented question of fact requiring resolution, assuming it was not raised in untimely fashion. *Id.*

## 13.51. Independent examination

Inmate who had been confined for more than one year without an independent examination as to his mental health by an expert appointed by the district court was entitled, in connection with his petition for release, as a matter of right, to such independent examination to test findings and conclusions of the hospital staff where he was confined. *J. Watson v. D. C. Cameron, Sup't etc.* (1962, 312 F. 2d 878, 114 U.S. App. D.C. 151).

## 13.52. Indeterminate commitment

That accused has pleaded guilty or that government has established that he committed criminal act constitutes only strong evidence that his continued liberty would imperil preservation of public peace and does not justify indeterminate commitment to mental institution on bare reasonable doubt as to past sanity. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).



**13.53. Inquiry after acquittal**

Under statute giving court authority to conduct hearing whenever a person is arrested, indicted, or charged by information and to commit person to mental hospital, trial court had jurisdiction to conduct hearing to determine competency of defendant after his acquittal on grounds of insanity, despite his refusal to raise issue in criminal trial. *United States v. C. L. Limber* (D.C. App. 1963, 192 A. 2d 530).

After jury returns verdict of not guilty by reason of insanity, inquiry as to whether accused is presently committable as person of unsound mind may be undertaken. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Defendant does not have absolute right to have his guilty plea accepted and trial judge may enter plea of not guilty in behalf of accused, but, if that is done, and defendant, despite his own assertions of sanity, is found not guilty by reason of insanity, commitment to hospital for mentally ill must be either under statute providing procedure for confining accused who, though found competent to stand trial, is nevertheless committable as person of unsound mind, or civil commitment provisions. *Id.*

**16. Judicial determination**

Manslaughter sentences were not void because of absence of judicial adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where certificate of superintendent of hospital stating that defendant had recovered his reason and was then of sound mind was filed in court before defendant pleaded guilty, and court ordered examination by two independent psychiatrists who reported that defendant was of sound mind at the time. *J. W. Hunter v. United States* (1963, 323 F. 2d 625,—U.S. App. D.C.—).

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

**16.50. Jurisdiction to commit**

Municipal court did not have jurisdiction under D.C. Code 1961 § 24-301(a) to commit person to mental hospital where court had found accused not guilty by reason of insanity but had finally disposed of the criminal charges against accused more than a year before such commitment and had erroneously committed accused under D.C. Code 1961 § 24-301(d). *Dr. D. C. Cameron v. W. V. Fisher* (1963, 320 F. 2d 731, — U.S. App. D.C. —).

**20. Potentially dangerous**

Mere fact that person committed under statute to mental institution following acquittal of criminal charge by reason of insanity has some dangerous propensity does not, standing alone, warrant his continued confinement but dangerous propensities must be related to or arise out of abnormal mental condition, whether such condition was that which constituted basis for acquittal. *W. Overholser v. H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Under rule that to be eligible for release from mental hospital, inmate must be free from such "abnormal mental conditions" as would make him dangerous to himself or community in reasonably foreseeable future, quoted words refer to a mental disease or mental defect, and not just any condition that is outside of the ordinary norm. *H. T. O'Bierne v. W. Overholser* (1961, 193 F. Supp. 652; rev'd, 302 F. 2d 852).

**20.50. Prejudicial cross-examination**

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such

testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; rev'd, 275 F. 2d 617).

**22. Pretrial mental examination**

Although a trial judge has some discretion in denying a motion for a mental examination as not timely, if counsel learns of defendant's alleged symptoms on day the trial is scheduled to begin, a motion submitted at that time cannot be denied as late. *L. P. Mitchell v. United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

A written motion on morning of trial for a mental examination of defendant based on allegations that defendant had displayed to counsel certain letters which raised inquiry with respect to his mental situation, and based on allegation that counsel had learned that defendant was an epileptic and exhibited unexplained and repeated criminal activities was, under the circumstances, adequate and timely, and denial thereof was prejudicial error. *Id.*

On a motion for an order directing a mental examination, defendant is not required to produce, in order to get the examination, enough evidence to prove that he is incompetent or irresponsible. *Id.*

**23.50. Psychiatrist's report**

Psychiatrist's reports on whether defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. *W. Overholser, Sup't. etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).

**24. Public policy**

That personal liberty should depend on such an arbitrary circumstance as mental hospital's change of "administrative policy" in determining whether sociopathic personality should be treated as a mental disease, as affecting release of committed person, would be contrary to basic principles of freedom. *H. T. O'Bierne v. W. Overholser* (1961, 193 F. Supp. 652; rev'd, 302 F. 2d 852).

**25. Purpose**

Purpose of ordering a mental examination for a defendant is to get evidence on whether he is or is not competent to stand trial, and another purpose is to get evidence on whether, if there is a trial, the jury should be instructed on insanity and criminal responsibility. *L. P. Mitchell v. United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

**28.50. Restored competency**

Determination of accused's eligibility to stand trial may be established by a finding of "restored competency" or a finding that he never was incompetent, and hence assuming that a proceeding to set aside original adjudication of incompetency is required, substance of such proceeding was provided by hearing in which hospital psychiatrist testified that accused was not a mental defective and that there was no indication of organic brain injury or mental illness. *V. E. Jenkins v. United States* (1962, 307 F. 2d 637, 113 U.S. App. D.C. 300).

**§ 24-302. Commitment of persons becoming insane while serving sentence.****NOTES TO DECISIONS**

Evidence 2  
In general 1  
Motion after sentence 3

**1. In general**

The fact that conviction is affirmed does not foreclose possibility of further inquiry whether sentence should be served in penitentiary or in mental hospital, since any prisoner found to be mentally ill may be transferred to such a hospital. *D. O. Williams v. United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

If accused who pleads guilty is found to be in need of psychiatric assistance, he may be transferred to hospital



for mentally ill following sentence. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### 2. Evidence

Where several psychiatrists testified that defendant was a psychopath or sociopath on day of killings and some thought condition a mental disease, evidence was sufficient to raise issue of insanity and require government to disprove beyond a reasonable doubt the claim that crimes were product of mental disease or defect. *D. O. Williams v. United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

Exclusion of conclusory portions of report by psychologist that tests indicated that defendant was suffering from effects of organic damage to central nervous system, even if error, was harmless where report was cumulative, psychologists had been permitted to testify to results of tests, and some of the psychiatrists who testified based their findings on report. *Id.*

In murder prosecution, where only three of eleven psychiatrists could say that killings in question were product of defendant's mental disease or defect, evidence was insufficient to raise, as a matter of law, reasonable doubt as to defendant's sanity and conflict in medical testimony became issue for jury. *Id.*

#### 3. Motion after sentence

Motion of defendant, made after his entry of plea of guilty to narcotics charge in open court and his sentence therefor, to set aside plea of guilty and to have himself committed to mental hospital to determine his mental competence to understand proceedings against him or to properly assist in his own defense, and affidavit of defendant's wife were insufficient to require court to allow withdrawal of plea of guilty. *D. Hopkins v. United States* (1963, 318 F. 2d 186, 115 U.S. App. D.C. 215).

### Chapter 4.—PRISONS AND PRISONERS

#### SUBCHAPTER I.—PRISONS

§ 24-401. Partial repeal. Dec. 23, 1963, 77 Stat. 623, Pub. L. 88-241, § 21, effective Jan. 1, 1964.

Section of act Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934, dealt with places of imprisonment, effect of cumulative sentences on place of imprisonment and jurisdiction of prosecutions depending on whether punishment was more or less than one year. The first three sentences are omitted as superseded by section 24-425 and balance of section are reenacted as part of section 11-963. See also section 11-521.

§ 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

#### NOTES TO DECISIONS

##### 4.50. Religious services

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of

the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood v. Clemmer, Director, etc. and Anderson, Acting Sup't etc.* (1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

§ 24-425. Place of imprisonment—Designation by Attorney General—Transfer.

#### NOTES TO DECISIONS

##### 1. Transfer of prisoners

Habeas corpus proceeding by defendant, who alleged that he had been transferred from confinement in Virginia to jail in District of Columbia while petition for appeal in forma pauperis from denial of previous petition for habeas corpus was pending in Court of Appeals for Fourth Circuit in order to hamper such previous habeas corpus proceeding, did not present moot question, and defendant was entitled to hearing at least as to legality of his transfer in view of failure of District of Columbia to controvert defendant's allegations. *J. A. Bolden, Jr. v. D. C. Clemmer et al.* (1961, 298 F. 2d 306, 111 U.S. App. D.C. 392).

§ 24-442. Powers of Department over institutions—Rules and regulations.

#### NOTES TO DECISIONS

Discipline of prisoners 1  
Review of administrators' actions 2

##### 1. Discipline of prisoners

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood v. Clemmer, Director etc. and Anderson Acting Sup't etc.* (1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

##### 2. Review of administrators' actions

Actions of prison authorities, including granting or withdrawal of claimed privileges of prisoners, are not reviewable by the court in "mandamus proceeding" in the absence of specific allegations particularly showing a clear breach of duty by prison administrators. *White and Childs v. D. L. Clemmer, Director, District of Columbia Department of Corrections et al.* (1961, 295 F. 2d 132, 111 U.S. App. D.C. 145).

Federal prisoners' pleadings seeking relief in nature of mandamus because of claimed deprivation of civil rights on account of their religion failed to allege with sufficient particularity a basis for redress by court where prison administration had been committed by statute to prison authorities and no breach of their statutory duty had been shown.

## PART V

# GENERAL STATUTES

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TITLE 25—ALCOHOLIC BEVERAGES.  
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.  
TITLE 27—CEMETERIES AND CREMATORIES.  
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS  
TITLE 29—CORPORATIONS.  
TITLE 30—DOMESTIC RELATIONS.  
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.  
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS.  
TITLE 33—FOOD AND DRUGS.

TITLE 34—HOTELS AND LODGING-HOUSES.  
TITLE 35—INSURANCE.  
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TITLE 42—PERSONAL PROPERTY.  
TITLE 43—PUBLIC UTILITIES.  
TITLE 44—RAILROADS AND OTHER CARRIERS.

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### TITLE 25.—ALCOHOLIC BEVERAGES

#### Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

##### § 25-103. Definitions.

###### NOTES TO DECISIONS

##### 5. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulations of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

##### § 25-107. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Commissioners are further authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25-111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each

class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited.

The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any



daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice of advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404(a); Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 3.)

#### AMENDMENTS

1961—Section 3, act Oct. 4, 1961, amended the second paragraph by inserting at the end of the first sentence the following new sentence: "Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited."

1953—Act June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

#### CROSS REFERENCES

District of Columbia Revenue Act of 1956, authority of Commissioners to make rules and regulations under, see § 47-1595a.

Other provisions for rules and regulations under this chapter, see §§ 25-106, 25-112, 25-115, 25-138.

Penalties for violations of chapter or rules and regulations, see §§ 25-118, 25-132.

Rules and regulations generally, see § 1-226.

#### NOTES TO DECISIONS

##### Double jeopardy 1 Regulations, validity of 2

##### 1. Double jeopardy

Convictions for violations of this act and the Liquor Taxing Act of 1934, did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

##### 2. Regulations, validity of

Section of the District of Columbia Code giving Commissioners authority to make regulations for issuance of liquor licenses and to forbid issuance of liquor licenses for businesses established subsequent to January 24, 1934, near or around schools, precluded promulgation of regulations forbidding liquor licenses to businesses established prior to January 24, 1934, because they are near schools, and prohibitory regulation was inapplicable to a restaurant business established in 1928. *H. S. Hensel et al. v. Alcoholic Beverage Control Board et al.* (1963, 321 F. 2d 754, — U.S. App. D.C. —).

Regulation of Alcoholic Beverage Control Board prescribing the terms upon which credit may be extended to liquor retailer by wholesalers and manufacturers was valid. *Press Liquors, Inc. v. F. E. Weakley, Chairman et c.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

#### § 25-109. Sale without license prohibited—Exceptions.

#### NOTES TO DECISIONS

##### 5.50. Evidence—sufficiency

Evidence sustained conviction for unlicensed keeping for sale and selling of alcoholic beverages. *R. L. Baer et al. v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 839).

Evidence was sufficient to sustain convictions of keeping for sale and selling alcoholic beverages without a license. *G. Williams & S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

#### § 25-111. License classifications—Fees.

\* \* \* \* \*

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of restaurants, said spirits, beer, and wine shall be sold or served only (1) to persons seated at public tables or at bona fide lunch counters, and (2) to persons in an enclosed or screened-off area in any such restaurant set aside for the accommodation of persons waiting to be seated at public tables. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-



carrying marine vessels serving meals, \$75 per month or \$825 per annum.

\* \* \* \* \*

(As amended May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1.)

#### AMENDMENTS

1962—Act May 31, 1962, amended subsection (g) by striking out the words "restaurants and" in the fourth sentence and adding thereto the matter above set out in the fifth sentence.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of act May 31, 1962, made clause (2) in the fifth sentence of subsection (g), effective "on the thirtieth day after the date of enactment."

### § 25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.

#### NOTES TO DECISIONS

##### 2. Delinquent retailer

The Alcoholic Beverage Control Board does not have authority to prohibit further purchases by a liquor retailer who is delinquent in the payment of his account to wholesalers but can only revoke or suspend license of retailer for violating rules or regulations concerning credit. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

### § 25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

#### NOTES TO DECISIONS

##### 1. Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

### § 25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

#### NOTES TO DECISIONS

##### 1. Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

### § 25-124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of

alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$1.50 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of \$1.50 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

\* \* \* \* \*

Former (c) repealed by act Sept. 14, 1961.

(c) [Former subsection (d) as amended:]

Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any beverages subject to taxation hereunder other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beverages for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverage to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beverage by the retail licensee, be marked "canceled" and retained by him.

(3) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of



the method hereinbefore set forth whenever in their judgment such action is necessary to prevent frauds or evasions.

(d) [Former subsection (g).]

(e) [Former subsection (h).] [Former subsection (e) repealed by act Sept. 14, 1961.]

(f) [Former subsection (k) as amended:] [Former subsection (f) repealed by act Sept. 14, 1961.]

No taxing provision of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wines, sold under such license in the District of Columbia during the preceding calendar month and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such beverages set forth in said report.

(g) The Commissioners are authorized to require that the immediate container of each beverage subject to tax under this chapter contain the license number of each licensee who sells or offers for sale such beverage. Such license number must be affixed at the time of display or sale of said spirits by the retailer. This subsection shall not apply to spirit containers of less than two ounces.

[Former subsections (g) and (h) renumbered as (d) and (e); (i) and (j) repealed by act Sept. 14, 1961, and former (k) renumbered as (f) by same act.]

(Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, § 801; Mar. 31, 1956, 70 Stat. 81, 82, ch. 154, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, §§ 1-7; Sept. 14, 1961, 75 Stat. 510, 511, Pub. L. 87-238, §§ 1-5; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 401.)

#### AMENDMENTS

1962—Section 401 act Mar. 2, 1962, amended clauses (4) and (5) of subsection (a) by increasing the tax from \$1.25 to \$1.50.

1961—Subsection (c) repealed by act Sept. 14, 1961, § 1. See main volume for provisions of subsection.

Subsection (d) renumbered as (c) by section 2 of same act, and amended to read as above set out. For provisions of former subsection (d) see main volume.

Subsections (e), (f), (i), and (j) were repealed and subsections (g) and (h) were renumbered as (d) and (e) by section 3 of the same act. For the provisions of the repealed subsections, see main volume.

Subsection (k) was renumbered as (f) and amended to read as above set out, by section 4 of the same act. See original subsection (k) in main volume.

Subsection (g) was added by section 5 of the act. Sections 6, 7, 8, and 9 of the act made enactments which are set out as notes hereunder.

#### EFFECTIVE DATE OF 1962 AMENDMENTS

Section 402, act Mar. 2, 1962, provided that the amendments made by section 401 "shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act." [Mar. 2, 1962]

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 9 of act Sept. 14, 1961, provided that: "This Act [making amendments, repeals, and changes set out under 1961 Amendment note] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [Sept. 14, 1961]."

#### CONSTRUCTION OF ACT SEPT. 14, 1961, AND DECLARATION OF AUTHORITY

Section 6 of act Sept. 14, 1961, provided that:

"Nothing in this Act [repealing subsection (c) renumbering subsection (d) as subsection (c) and amending same to read as above set out; repealing subsections (e), (f), (i), and (j); renumbering (g) and (h) as (d) and (e) and renumbering (k) as (f) and amending same to read as above set out and adding subsection (g)] shall be construed as requiring the payment of any further tax on beverages to which stamps have been lawfully affixed under provisions of prior law."

Section 8 of said act provided that:

"Nothing in this Act [making the repeals, amendments and renumberings above set out] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

#### REDEMPTION OF UNUSED STAMPS

Section 7 of act Sept. 14, 1961, provided that:

"The Commissioners or their designated agent are authorized to redeem any unused stamps issued under the provisions of prior law or to accept same in payment of tax shown due on a monthly return."

#### NOTES TO DECISIONS

##### 1. Affixation of tax stamps

Alcoholic spirits remaining on retail liquor dealer's premises for more than 24 hours without having District of Columbia tax stamps affixed were properly condemned and forfeited, even though dealer had the necessary stamps on his premises. *Apex Liquors Inc. v. District of Columbia* (1962, 303 F. 2d 206, 112 U.S. App. D.C. 346).

§ 25-128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

#### NOTES TO DECISIONS

##### 2. Evidence

Evidence sustained convictions for disorderly conduct and drinking in public. *J. M. Heard v. District of Columbia* (D.C. Mun App. 1962, 179 A. 2d 723).

§ 25-129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

## NOTES TO DECISIONS

## .50. Applications for search warrant

A lapse of four days between time police officers observed illegal activities on premises and time police department made application for search warrant based on policeman's affidavit describing sale of alcoholic beverages on premises without a license was not, under the circumstances, unreasonable as a matter of law. *G. Williams &*

*S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

§ 25-138. Tax on beer.

## NOTES TO DECISIONS

## 1. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).





## TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

### Chapter 6.—MONEY LENDERS—LICENSES

§ 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

#### NOTES TO DECISIONS

##### 18.50. Summary judgment

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law," claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc. v. Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

§ 26-610. Persons, associations, and corporations exempt from operation of this chapter.

(a) Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, small business investment companies licensed and operating under the Small Business Investment Act of 1958, or real estate brokers, as defined in sections 47-1701 to 47-1709, or to life insurance companies. As used in this section the term "life insurance companies" means and includes any life insurance company authorized to do business in the District of Columbia pursuant to the Life Insurance Act (48 Stat. 1127, et seq.) and any other life insurance company which has a valid, current license to do business as such in any State of the United States.

(b) Any person or any legal entity exempted from the provisions of this Act by such subsection (a) of this section making loans secured on real or personal property in the District of Columbia who or which does not maintain an office for doing business in the District of Columbia or a residence in said District where such person or legal entity may be served with process in any suit arising out of any such transaction or in connection with such property shall appoint and maintain at all times in the District of Columbia a resident agent upon whom process may be served in any such suit, and shall register with the Commissioners of the District of Columbia or with their designee the name and address of such resident agent. Any such person or legal entity which fails to appoint and maintain at all

times in the District of Columbia such resident agent shall not, while such failure continues, be entitled to the exemption provided in this section. Whenever any such person or entity does not have in the District of Columbia an agent for service of process or such agent cannot with reasonable diligence be found at his registered address, then the said Commissioners or their designee shall be the agent for the service of process for such person or entity. Service of process on the Commissioners or their designee shall be made by delivering to, and leaving with them, or with any person having charge of their office, or with their designee, duplicate copies of the process accompanied by a fee in the amount of \$2.00 and such service shall be sufficient service upon such person or entity. In the event of such service, the Commissioners, or their designee, shall immediately cause one of such copies to be forwarded by registered or certified mail, addressed to such person or entity at his or its address, as such address appears on the records of the Commissioners or their designee. Any such service shall be returnable in not less than thirty days unless the rules of the court issuing such process prescribe another period, in which case such prescribed period shall govern. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on any such person or entity in any other manner now or hereafter permitted by law. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10; June 11, 1960, 74 Stat. 196, Pub. L. 86-502, § 7; Dec. 5, 1963, 77 Stat. 344, Pub. L. 88-191, § 1.)

#### REFERENCE IN TEXT

The Life Insurance Act referred to in subsection (a) is the act described in section 35-301.

The Small Business Investment Act of 1958, referred to in text, is the act of Aug. 21, 1958, 72 Stat. 689, Pub. L. 85-699 and is set out in various sections of titles 12, 15 and 18 of the U.S. Code.

#### AMENDMENTS

1963—Act Dec. 5, 1963, amended the section as follows:

- (1) Inserted (a) before the first word;
- (2) Inserted at the end of subsection (a) the matter relating to life insurance companies;
- (3) Added subsection (b).

1960—Act June 11, 1960, amended the section by adding after the word "associations" the words, "small business investment companies licensed and operating under the Small Business Investment Act of 1958".





## TITLE 27.—CEMETERIES AND CREMATORIES

### Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

#### § 27-119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

It shall be unlawful to inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioners of the District of Columbia shall designate, or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except, upon such terms and conditions as the Commissioners may specify. Notwithstanding the provisions of the preceding sentence, the Commissioners may, in their discretion, by regulation authorize (a) tissue banks operating pursuant to the District of Columbia Tissue Bank Act or (b) other persons subject to regulations made pursuant to such Act, or both, to remove, transport, and dispose of tissue taken from such dead body without such permit. Any violation hereof shall be subject to the penalties contained in section 27-126. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676, as added Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 10.)

#### REFERENCE IN TEXT

District of Columbia Tissue Bank Act is set out as chapter 2A of title 2 and as amendments to this section and section 27-125.

#### AMENDMENT

1962—Section 10 of act Sept. 10, 1962, amended this section by striking, in the first sentence the words, "remove, transport" and by inserting immediately after "designate" the words, "or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except" and by the addition of the second sentence as above set out beginning with the word "Notwithstanding" and ending with the word "permit"

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note section 2-251.

#### CROSS REFERENCE

See other penalty provisions, section 2-254.

#### § 27-125. Permit to cremate—Embalming—Removal of tissue immediately after death.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the director of public health of said District, and

then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under the Healing Arts Practice Act of the District of Columbia, tissue donated in accordance with the provisions of the District of Columbia Tissue Bank Act may be removed by or under the supervision of a person licensed under the authority of section 2-253 for preservation in a tissue bank operating pursuant to such Act, without regard for any time limitation, or for any permit or certificate requirement, established by this section: *Provided*, That with respect to a dead human body in the custody of the Coroner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Coroner in each case. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 153, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 11.)

#### REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in Title 2, chapter 1, of the D.C. Code and the District of Columbia Tissue Bank Act is set out in this section, section 27-119a, and in Title 2, chapter 2A, of the D.C. Code.

#### AMENDMENT

1962—Section 11 of act Sept. 10, 1962, amended section by the addition of the matter above set out and beginning with the word "Notwithstanding" and ending with the word "case."

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2-251.

#### CROSS REFERENCE

For other provisions of the Tissue Bank Act, see title 2, ch. 2A and sec. 27-119a.

#### § 27-126. Penalty.

#### CROSS REFERENCE

For other penalty provisions, see section 2-254.





## TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chap.	Sec.
30. Statute of Frauds.....	28-3001
31. Fraudulent Conveyances.....	28-3101

### Chapter 1.—NEGOTIABLE INSTRUMENTS—FORM AND INTERPRETATION

#### § 28-101. Definitions—Sundays and holidays—Application of the law merchant.

##### 1. Suit without possession

Plaintiff could not maintain action as holder of note where there was no proof that it was in possession of the note at time it commenced the action, and regaining of possession after commencement of action did not cure the defect, nor could plaintiff maintain action as a pledgor where there was no proof that note was delivered to another as a pledge. *F. H. Johnson and E. Lewis v. United Securities Corp., et ano.*, (D.C. App. 1963, 194 A. 2d 132).

#### § 28-124. Signature forged or without authority.

##### NOTES TO DECISIONS

##### 7. Liability of bank

In customer's action against bank predicated upon cashing checks payable to him upon basis of forgeries of his signature affixed thereto by his employee who conducted his banking business, instructions stating that if customer's negligence contributed proximately to cashing of checks in question, bank was entitled to verdict and that customer was required to use ordinary diligence in ascertaining condition of his own operation were erroneous in almost directing verdict for bank. *Dr. S. L. Joffe v. Riggs National Bank* (D.C. Mun. App. 1962, 179 A. 2d 390).

Law holds banks to strict accountability and customer is not precluded from recovering simply because he has been lax in conduct of his business affairs. *Id.*

Mere negligence of customer in conduct of his business affairs would not preclude recovery from bank for paying proceeds of checks to his employee who forged his name thereon, but to preclude recovery it was necessary for bank to show that customer's negligence directly and proximately affected conduct of bank in cashing checks bearing forged endorsements. *Id.*

### Chapter 2.—CONSIDERATION

#### § 28-204. Holder of lien on instrument is holder for value.

##### NOTES TO DECISIONS

##### 1.50. Perfection of lien

Where company obtained negotiable installment notes from its consumer-debtors and negotiated to the bank the notes of the consumers and delivered the installment notes and contracts of sale to the bank, and account books of company were plainly marked to indicate that its property in the notes had been transferred to the bank, the company divested itself of dominion and control over installment notes and contracts although it was the bank's agent for collection of the notes, and bank's lien became perfected without the giving of notice to makers, and company's trustee in bankruptcy was not entitled to have the transfers set aside. *M. Stevan, Trustee etc. v. Union Trust Company etc. et al.* (1963, 316 F. 2d 687, 115 U.S. App. D.C. 36).

### Chapter 3.—NEGOTIATION

#### § 28-301. Definition—Bearer instrument—Order instrument.

##### NOTES TO DECISIONS

##### 1.50. Holder in due course

Corporation was a holder in due course of note secured by trust deed notwithstanding corporation agreed to purchase note and sent its check therefor to title company prior to execution of note, where actual purchase did not occur until note had been executed by defendants and endorsed by payee, and hence defenses of fraudulent representations as to condition of house for which trust deed was executed were not available. *A. M. Latney & J. L. Latney v. S. Oshinsky* (D.C. Mun. App. 1961, 169 A. 2d 687).

### Chapter 4.—RIGHTS OF HOLDER

#### § 28-402. "Holder in due course" defined.

##### NOTES TO DECISIONS

##### 8.50. Holder in due course

Evidence of transaction, in which used automobile buyer signed conditional sales contract, which included \$150 finance charge on \$301 cash balance, and promissory note purchase by finance company at more than 33½ percent discount after credit terms had been prearranged, showed that finance company was not a holder of note in due course and that transaction was a cash sale accompanied by note bearing a usurious rate of interest. *J. W. Beatty v. Franklin Investment Co., Inc.* (1963, 319 F. 2d 712, 115 U.S. App. D.C. 311).

Where conditional sales contract clearly showed that automobile buyer was charged \$150 for financing of cash balance of \$301 and that finance company acquired at a discount of more than 33½ percent the note secured by conditional sales contract, these circumstances constituted a badge of fraud and made a prima facie showing of usury which had to be explained before finance company could be found to be a holder in due course. *Id.*

Corporation was a holder in due course of note secured by trust deed notwithstanding corporation agreed to purchase note and sent its check therefor to title company prior to execution of note, where actual purchase did not occur until note had been executed by defendants and endorsed by payee, and hence defenses of fraudulent representations as to condition of house for which trust deed was executed were not available. *A. M. Latney & J. L. Latney v. S. Oshinsky* (D.C. Mun. App. 1961, 169 A. 2d 687).

### Chapter 11.—UNIFORM SALES—FORMATION OF CONTRACT

#### § 28-1115. Implied warranties of quality or fitness—Effect of express warranty.

##### NOTES TO DECISIONS

##### 3.50. Conflict of express and implied warranties

An express warranty giving a discount on replacement and installation of parts in a used automobile would not of itself be deemed to conflict with implied warranty of fitness of automobile. *A. Green v. Northeast Motor Company* (D.C. Mun. App. 1961, 166 A. 2d 923).



Provision that buyer understood there were no warranties except as provided in contract for sale of automobile did not preclude evidence of implied warranty of fitness. *Id.*

## Chapter 15.—ACTIONS FOR BREACH OF CONTRACT

### § 28-1505. Action for damages for nondelivery—Measure of damages.

#### NOTES TO DECISIONS

Amount of recovery 1  
Mitigation 3.50

#### 1. Amount of recovery

In action for failure to deliver stock on a particular day, measure of damages is the difference between contract price and market price on date when contract was broken, i.e. the last day on which delivery of stock should have been made. *L. Sade et al. v. A. K. Stanley* (1963, 212 F. Supp. 631).

#### 3.50. Mitigation

One injured by breach of contract must take reasonable steps to mitigate damages, and may not sit back and watch damages grow and seek to collect them when in his judgment they have become sufficiently enhanced. *L. Sade et al. v. A. K. Stanley* (1963, 212 F. Supp. 631).

## Chapter 27.—INTEREST AND USURY

### § 28-2703. Usury—Definition.

#### NOTES TO DECISIONS

#### 19. Summary judgment

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law", claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc. v. Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

### § 28-2705. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.

#### 3. Recovery of interest

Finance company, which was not a holder in due course of promissory note calling for usurious rate of interest, was not entitled to recover any interest on note. *J. W. Beatty v. Franklin Investment Co. Inc.* (1963, 319 F. 2d 712, 115 U.S. App. D.C. 311).

## Chapter 30.—STATUTE OF FRAUDS

[Transferred from chapter 3 of former Title 12]

Sec.

- 28-3001. Estates created by parol—Estate by sufferance.
- 28-3002. Actions to charge executors or others to answer for debt or default of another.
- 28-3003. Declarations, grants, and assignments of trust—Implied trusts.
- 28-3004. Contracts for sale of goods.
- 28-3005. New promise to be in writing—Effect of payment on account—Recovery against joint contractors, coexecutors, coadministrators when statute waived.
- 28-3006. New promise by quondam infant to be in writing—Ratification by conduct.

### § 28-3001. Estates created by parol—Estate by sufferance.

Every estate in lands, tenements, or hereditaments for a greater term than one year attempted to be created by parol, or otherwise than by deed, shall be an estate by sufferance. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1116.)

#### STATUTORY REFERENCE—BRITISH STATUTE

Statute of Frauds (29 Car. 2d, c. 3) provided that: "No leases, estates, or interests, either of freehold, or terms of years, or any uncertain interests, not being copyhold, or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law."

#### CROSS REFERENCE

Other provisions requiring estates in lands to be created by written instrument, see §§ 45-106, 45-820.

#### NOTES TO DECISIONS

Assignment of lease 1  
Executed oral assignment 2  
Extension agreement 3  
Lease by agent-lessor 4  
Ouster of tenants 5  
Parol agreement 6  
Termination of oral tenancy 7

#### 1. Assignment of lease

An assignment of a lease conveys an interest in realty and comes within the statute of frauds if for a greater term than one year, however, it is well established that an oral agreement creating an interest in land which has been carried into effect is valid and enforceable and where the lessee turns the premises over to the assignee and the assignee enters into possession with the consent of the lessor and pays rent, the assignment is complete and the rights and liabilities of the parties are not affected by the statute. *Diatz v. Washington Technical School* (D.C. Mun. App. 1950, 73 A. 2d 227, rehearing denied 73 A. 2d 718).

#### 2. Executed oral assignment

An oral agreement creating an interest in land which has been carried into effect is valid. *Mars v. Spanos* (1944, 139 F. 2d 369, 78 U.S. App. D.C. 230).

Where retiring partner received back his contributions to partnership and orally assigned to copartner rights in five-year lease of store, lease became property of general partnership under oral agreement between assignee and third person, and general partnership immediately took possession of leased premises with implied consent of landlord and discharged obligations under lease until dissolved by order of court, as respects rights of assignors and assignees, both assignments were completely executed and hence not avoidable for violation of this section. *Id.*

#### 3. Extension agreement

A written six months' extension agreement which was entered into by lessor and lessees before expiration of five-year lease, and which did not create or purport to create a new estate, and which made no change in original lease except to fix new expiration date, was valid although not under seal, and lessees would not be entitled to thirty-day notice to quit as tenants at sufferance. *Binder v. Jaffe* (D.C. Mun. App. 1953, 101 A. 2d 260).

#### 4. Lease by agent-lessor

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Paul v. Holloway* (D.C. Mun. App. 1956, 122 A. 2d 774).

#### 5. Ouster of tenants

Plaintiff-grantee could not ignore the legal procedure provided for ousting tenants, and compromise with them for a sum which it might elect to pay, and then recover that sum from defendant-grantors upon any basis of breach of warranty. *Standard Sav. Bank v. Stone* (1922, 280 F. 1016, 52 App. D.C. 42).

#### 6. Parol agreement

In suit for specific performance of deceased's alleged parol agreement to leave house and premises to plaintiff

in consideration for his caring for deceased, where plaintiff and wife moved into house after it was purchased by deceased, plaintiff paid no rent during lifetime of deceased who occupied room of house and occasionally ate meals with plaintiff, evidence supported judgment dismissing action on ground that performance was not sufficient to take case out of operation of statute of frauds. *Slaughter v. Madison* (1943, 135 F. 2d 650, 77 U.S. App. D.C. 226, certiorari denied 63 S. Ct. 1331, 319 U.S. 768, 87 L. Ed. 1717).

#### 7. Termination of oral tenancy

Where, at most, claim of tenant was that landlord orally promised that tenant could remain in possession of lot used as a parking lot at such rental as landlord might from time to time fix and to which tenant might agree, landlord's notice to tenant to quit terminated the tenancy, though landlord had allegedly agreed that lease was to run until landlord desired to erect a building on the lot. *Snitman v. Goodman et al.* (D.C. Mun. App. 1955, 118 A. 2d 394).

### § 28-3002. Actions to charge executors or others to answer for debt or default of another.

No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, of any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1117.)

#### NOTES TO DECISIONS

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#### 1. Acknowledgment

Where defendant, with whom plaintiff had made a gratuitous bailment of money, wrote plaintiff, in response to letters requesting payment of the money, that he was in no position "at present" to send plaintiff any money, the letter was sufficient acknowledgment of the debt to stop running of statute of limitations. *Irvine v. Grado-ville* (1955, 221 F. 2d 544, 95 U.S. D.C. 263).

#### 2. Ambiguities

Necessary elements of a writing required by statute of frauds may not be supplied by parol, but ambiguities in the terms may be resolved by other evidence. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 399, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

#### 3. Application generally

This section applies to an agreement which appears from its terms to be incapable of performance within a year. *Street v. Maddux* (1928, 24 F. 2d 617, 58 App. D.C. 42).

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, wherein broker claimed no interest in realty, statute of frauds was not applicable and afforded no defense. *Kyle v. Wiley* (D.C. Mun. App. 1951, 78 A. 2d 769).

#### 4. Approval

The fact that printed form used in making agreement for purchase of realty provided that the deposit was subject to the owner's approval did not render agreement signed by purchasers and broker but not by owner unenforceable under this section where such approval had previously been given in exchange of telegrams between owner and broker. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

#### 5. Contract signed by purchaser only

Where purchaser brought action against vendor for breach of contract to convey land and only produced carbon copy of contract bearing only the signature of the purchaser, such document was no more than an offer to buy and was within statute of frauds and was unenforceable against vendor. *Greenfield v. Murray, Executor* (D.C. Mun. App. 1955, 117 A. 2d 227).

#### 6. Description of property

If contract contains in itself no description of the property to be sold, standing alone, no court of equity could specifically enforce it, but, if the description is found in other writings, forming part and parcel of the transaction, the omission is not fatal. *Shell Eastern Petroleum Products v. White* (1934, 68 F. 2d 379, 62 App. D.C. 332).

#### 7. Estoppel

One who induces another by a parol agreement to change his position so materially that unless inducing agreement is enforced a fraud results is estopped to set up statute of frauds to bar such enforcement. *Brewood v. Cook et al.* (1953, 207 F. 2d 439, 92 U.S. App. D.C. 386).

That employee, upon obtaining employment, came from Harrisburg to Washington, did not estop employer asserting that alleged oral contract for two years' employment was barred by statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

#### 8. Evidence

In action against vendor by purchaser to have contract for sale of realty canceled and to recover payments made under the contract, on ground that purchaser was induced to sign a contract by fraudulent misrepresentations of vendor, evidence of settlement agreed to by the parties after suit had been begun, was properly admitted over objection that offers to compromise are not admissible in support of a contested claim or defense, though agreement was oral and payments were not to be completed within one year, so that no suit could have been brought on the agreement itself. *Hiltbold v. Stern* (D.C. Mun. App. 1951, 82 A. 2d 123).



## 9. Fraud

Doctrine of fraud may be invoked to prevent statute of frauds from becoming an instrument of fraud. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

In absence of other and stronger circumstances, a mere refusal to perform an oral agreement is not such fraud as to prevent application of statute of frauds, despite hardship to a plaintiff. *Id.*

## 10. Improvements

One who has been induced to alter his position and make improvements on property based on a parol contract may enforce such contract in the courts notwithstanding this section. *De Grazia v. Anderson* (D.C. Mun. App. 1948, 62 A. 2d 194).

## 11. Memorandum

One party's memorandum, evidencing oral agreement for sale of land, not signed by other parties or any one on their behalf was insufficient. *Bell v. Morgan* (1952, 199 F. 2d 168, 91 U.S. App. D.C. 65).

Where there was a full and definite agreement as to all essentials which parties intended to be binding, and the parties signed a memorandum which was sufficient to satisfy the statute of frauds, execution of a formal contract as contemplated by the memorandum was not necessary to effect a valid contract between the parties. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

Written memorandum, signed by two parties, which stated that a \$500 deposit had been received from one of the parties, and that such deposit represented partial payment on agreed price of \$7,500 cash and assumption of existing note in purchase of business and machinery of named business, the location of which was stated, plus agreement of lease, and which stated that formal contract was to be drawn later, with full settlement within 30 days of such memorandum, was sufficiently definite and certain to satisfy statute of frauds, since it left no doubt as to who was purchaser, who was seller, what property was involved, and what the terms were. *Id.*

A written memorandum, to remove an oral agreement for two years' employment of statute of frauds, must state all promises of parties with sufficient clarity and definiteness to render essential terms of agreement clear without resort to parol testimony. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

Letter wherein defendant offered employment and stated that defendant was likely to be busy for at least the succeeding two years was not a sufficient memorandum of an alleged oral contract for two years' employment to remove contract from statute of frauds. *Id.*

## 12. — Disclosure of vendor

A contract for the sale of land, where the memorandum fails to disclose the name of the vendor, can not be enforced. *Storrow v. Concord Club* (1934, 70 F. 2d 852, 63 App. D.C. 190).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and asked for \$1,000 deposit and thereafter broker and purchasers signed agreement which identified purchasers and property and fully set out purchase price and manner of payment, the contract was binding under this section, notwithstanding the owner's name did not appear in the agreement and it was never signed by him. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer, the fact that agreement, which was signed by broker and purchasers, did not name owner and was sent to owner who refused to sign it did not establish that broker did not have authority to make agreement binding on owner under this section. *Id.*

Where contract for sale of real estate described the seller as the "seller" and there was no description of the premises allegedly involved except that the contract stated that the premises were "owner occupied", there was no reasonably sufficient description of the premises involved and parol testimony was inadmissible to supply the description. *Fitzgan v. Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

## 13. Option within year

While plaintiff's contract with defendant was in parol, the option might have been exercised within a year, and the statute therefore did not apply. *Campbell v. Rawlings* (1922, 280 F. 1011, 52 App. D.C. 37, 23 A.L.R. 854).

## 14. Oral promise

Where debt of open advertising account had been incurred by corporation, and after corporation had become insolvent, one of the officers made several payments on debt with his personal funds and stated that he wanted advertiser to get his money, it was doubtful that oral statement constituted a promise to pay corporate debt and even assuming it did, any claim based on it was barred by statute of frauds. *Alvin Epstein Advertising Corp. v. Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

## 15. — Stockholder's oral promise

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debts, evidence, verbal or documentary, failed to establish consideration which would support an original promise to pay debt, independent of simultaneous responsibility of corporation. *Smith v. Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

## 16. — Extension by oral agreement

Under District of Columbia law, provision for time of performance in contract for sale of business and leasehold of premises upon which business was conducted, which contract was required to be in writing and signed by party to be charged, could validly be extended by oral agreement, where time was not of essence of contract. *Jacobsen v. Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

Where lessor and lessees entered into written six months' extension agreement before expiration of five-year lease, lessees were not entitled to remain in possession past the extension period on basis of alleged parol option for additional six months' extension beyond first extension in view of fact that alleged option did not comply with Statute of Frauds and was not supported by any consideration. *Binder v. Jaffe* (D.C. Mun. App. 1953, 101 A. 2d 260).

## 17. Parol evidence

Where time is not of the essence of a written contract within the statute of frauds, strict compliance with covenant as to time of performance may be waived, prior to breach, by oral agreement of the parties without affecting other provisions of the written contract, and the mutual promises of the parties are sufficient consideration for such oral agreement. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may be properly inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant v. Jack Stone Co.* (D.C. Mun. App. 1949, 62 A. 2d 799).

## 18. Performance—Defeasance distinguished

An oral contract wherein plaintiff was to assume duties of resident manager of an apartment development for which services he was to receive \$75 per week in addition to a rent-free apartment for the duration of the contract which was to continue until plaintiff completed his law studies as a student duly matriculated at a law school or unless plaintiff were obliged to discontinue his law studies because of deficient scholarship or for some similar reason, was void under the statute of frauds as an agreement not to be performed within the space of one year from the making thereof, in view of fact that at the time of contract plaintiff had approximately three years of law studies to complete, and in view of fact that provision for termination of the contract which might have occurred within one year was not performance necessary to take the agreement out of the operation of the statute. *Coan, Jr. v. Orsinger and Tyler Gardens Corp.* (1959, 265 F. 2d 575, 105 U.S. App. D.C. 201).

Fact that a contract may be terminated, or further performance rendered impossible, within the period of one



year, does not take it out of the statute of frauds where the obligation is one which cannot be performed within the year, since discharge from liability under a contract is not performance thereof within the statute *Id.*

#### 19. — Partial performance

Remaining in employ of one orally agreeing to devise real estate when husband wished to move to another city did not amount to such a change in the course of service in life of promisee as would justify invocation of exceptional rule of equity permitting specific performance. *Faunce v. Woods* (1925, 5 F. 2d 753, 55 App. D.C. 330, 40 A.L.R. 208).

That employee worked for six weeks under alleged oral contract for two years' employment was not sufficient part performance to take contract from statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

Generally, nothing short of full performance will take a contract not to be performed within one year from within statute of frauds. *Id.*

#### 20. — Susceptible of performance within one year

An alleged co-broker's agreement was not within the statute of frauds where it would have been fully performed as soon as the purchaser purchased the building site which could have occurred within one year, it being immaterial that the sale for which commissions were sought took place more than a year after the alleged co-broker's agreement. *Snyder etc. v. Hillegeist et al.* (1957, 246 F. 2d 649, 100 U.S. App. D.C. 368).

An agreement which is capable, possible or susceptible of performance within one year is not within the statute of frauds. *Id.*

#### 21. — Time of performance

Although time of performance was specifically provided in written memorandum, in view of mutual agreement between parties on or before date of performance to waive strict compliance and to extend time for the performance, time was not of the essence of the contract, and therefore the contract as orally extended was not void under statute of frauds. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

#### 22. Personal obligation

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and § 38-121 authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within this section requiring special promise to answer for debt of another person to be in writing. *Jones v. Guice* (D.C. Mun. App. 1948, 57 A. 2d 190).

#### 23. Pleading

Complaint, alleging in effect that owner employed broker to sell realty, that in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and that broker and purchasers signed agreement which carried out authority granted to broker and which identified purchasers and property and set out purchase price and manner of payment, stated a claim on which relief could be granted, although agreement did not name, and was not signed by owner. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

#### 24. Question for court

Where evidence is clear and unconflicting, legal sufficiency of memorandum to remove case from statute of frauds is question for court. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

#### 25. Renewal notice under lease

Where extended term of a lease is fixed by and is a part of the original written lease, and comes into existence merely by lessee's exercising his option and giving required notice, no question as to application of statute of frauds arises. *Worthing, T/A etc. v. Serkes* (D.C. Mun. App. 1955, 111 A. 2d 877).

Renewal notice of tenant unsigned, but bearing stamped trade name, enclosed in the same envelope containing his rental check which bore tenant's signature and trade name was sufficient compliance with requirements of lease. *Id.*

#### 26. Review

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debt, in view of general findings in favor of stockholder, municipal court of appeals must assume that issues of consideration, and whether promise, if made, was an original and independent or merely a collateral promise to answer for the debt, default, or miscarriage of the corporation, had been resolved in favor of stockholder. *Smith v. Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

#### 27. Sale—Leasehold

Under District of Columbia law, agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen v. Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

#### 28. — Realty

Under this section, an agreement for sale of real estate is enforceable only when it is in writing and there is a sufficient description of the thing sold, the price to be paid, and the names of the party selling and the party buying, and none of such elements can be supplied by parol testimony. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84). See, also, *Fitzaan v. Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

#### 29. Settlements

The statute of frauds requiring written evidence of an agreement to answer for the death, default or miscarriage of another is not applicable where the settlement agreement in compromise rested on the theory of direct liability by reason of ownership of the striking car. *Saunders System Washington Co. v. Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

#### 30. Trusts

Where complaint charged facts indicating that defendant held all but her own share of land in question charged with a constructive trust for plaintiff and certain other designated persons, plaintiff was not foreclosed from recovery of her share by this section. *Major v. Shaver* (1946, 6 F.R.D. 207).

#### 31. Unjust enrichment

Where plaintiff's alleged oral option to purchase land was invalid under statute of frauds, and plaintiff's alleged action in interesting third party to purchase land was not for benefit of landowners but solely to enable plaintiff to make profit, unintended benefit conferred on landowners when they sold to such third party at higher price was not necessarily unjust and plaintiff could not recover value of the benefit under theory of unjust enrichment. *Rosenkoff v. Finkelstein* (1952, 195 F. 2d 203, 90 U.S. App. D.C. 263).

#### 32. Waiver

In discharged employee's action to recover salary after discharge, wherein employer at outset denied alleged contract of employment and made it clear that employer was relying on statute of frauds, employee's testimony as to conversation concerning employment was admissible on issue as to whether there had been an oral agreement for employment, and employer's failure to object to such testimony did not constitute a waiver of the defense based on statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

#### 33. Writings

Generally, a check may be deemed to be a writing sufficient to satisfy requirements of statute of frauds if it bears notations or contains references to papers which embody the essential terms of the contract. *Alvin Epstein Advertising Corp. v. Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

Even if oral statements constituted a promise to pay debt of corporation, issuance of three personal checks by alleged promisor in part payment of debt where checks were not in evidence could not constitute a writing sufficient to satisfy requirements of statute of frauds. *Id.*



## 34. — Related writings

A complete contract regarding realty binding under this section may be gathered from letters, writings and telegrams between the parties relating to the subject matter of the contract when so connected with each other that they may be fairly said to constitute one paper relating to the contract. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

## § 28-3003. Declarations, grants, and assignments of trust—Implied trusts.

All declarations or creations of trust or confidence of any lands, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of none effect.

All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same or by such last will or devise, or else shall likewise be utterly void and of none effect.

Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1118.)

## CROSS REFERENCES

Conveyances in general, see § 45-101 et seq.  
Estates in lands in general, see § 45-801 et seq.  
Mortgages and deeds of trust, see § 45-601 et seq.

## NOTES TO DECISIONS

Fraudulent verbal promise 1  
Generally 2  
Implied trusts 3  
Informal writing sufficient 4  
Oral agreements 5  
Parol trust unenforceable 6  
Taxation 7  
Third parties 8  
Writing, sufficiency of 9

## 1. Fraudulent verbal promise

Facts presented bring case within the second provision of the Statute of Frauds and a trust would result by implication or construction of law. *Bennett v. Bennett* (1949, 83 F. Supp. 19).

## 2. Generally

This section requires, not only that writing be sufficient to establish trust, but that it show precisely what the trust covers. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

The requisite of certainty in instrument creating trust in realty includes subject matter embraced within trust, beneficiaries, the nature and quantity of interests which they are to have and manner in which trust is to be performed. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379). See also, *Loehler Constr. Co. v. Auth* (1931, 51 F. 2d 435, 60 App. D.C. 273).

## 3. Implied trusts

Implied or resulting trusts are recognized by the law in force in the District of Columbia. *Haliday v. Haliday* (1926, 11 F. 2d 565, 56 App. D.C. 179).

The statute relating to declarations and grants of trust and to implied trusts did not preclude court from recognizing as a trust fund money on deposit with building association in name of testatrix as trustee for her grandson who was a polio victim. *In re Scott's Estate* (1951, 96 F. Supp. 290).

## 4. Informal writing sufficient

The writing required to prove the trust may be informal provided it establishes the fact and the terms of the trust. *Tschiffely v. Tschiffely* (1940, 107 F. 2d 191, 70 App. D.C. 386).

## 5. Oral agreements

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm v. Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

## 6. Parol trust unenforceable

Parol trust agreement is unenforceable under status of frauds. *Baldi v. Ambrogio* (1937, 89 F. 2d 845, 67 App. D.C. 101). See, also, *Chiswell v. Johnston* (1924, 299 F. 681, 55 App. D.C. 3); *Dahlgren v. Dahlgren* (1924, 1 F. 2d 755, 55 App. D.C. 52, certiorari denied 45 S. Ct. 125, 266 U.S. 626, 69 L. Ed. 475).

## 7. Taxation

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under District of Columbia Code section taxing all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder v. District of Columbia* (1951, 187 F. 2d 217, 88 U.S. App. D.C. 170).

## 8. Third parties

Verbal trusts are without force or effect under statute of frauds to defeat rights of third parties. *Thurm v. Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

## 9. Writing, sufficiency of

Where wife first executed deed conveying to husband one-third interest in property and then, having kept possession of deed, destroyed it, simultaneously making will devising property to her brother and sister, and still later wife wrote explanatory letter to husband stating that her brother and sister would deal fairly with him and "Do the best you can, and sell, and enjoy the little I have been able to accumulate and which I now gladly and lovingly pass on to the three of you", the letter was not a "declaration of trust" in favor of husband. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

## § 28-3004. Contracts for sale of goods.

No contract for the sale of any goods, wares, and merchandise for the price of \$50 or upward shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such a contract or their agent thereunto lawfully authorized. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1119.)

## CROSS REFERENCE

Uniform Sales Act, see § 28-1104.

## NOTES TO DECISIONS

Letters written after contract 1  
Necessity of objection 2  
Original promise of general contractor 3

## 1. Letters written after contract

It is immaterial that letters were written after instead of before or at the time of the contract. *Pierce v. Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

## 2. Necessity of objection

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for



new trial. *Ford v. Spivey et al.* (D.C. Mun. App. 1951, 79 A. 2d 565).

### 3. Original promise of general contractor

Alleged original promises of the general contractor to pay a materialman for materials furnished a subcontractor by the application of any retainable percentages accruing to the subcontractor were insufficient to warrant judgment against the general contractor when the subcontractor defaulted and the general contractor was compelled to take over the work and finish it at a loss. *Watkins-Whitney v. Thyson* (1935, 78 F. 2d 1022, 65 App. D.C. 404).

## § 28-3005. New promise to be in writing—Effect of payment on account—Recovery against joint contractors, coexecutors, coadministrators when statute waived.

In actions of debt or upon the case grounded upon any simple contract, no acknowledgement or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the statute of limitations or to deprive any party of the benefit thereof unless such acknowledgement or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby: *Provided*, That nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever: *Provided, also*, That in actions to be commenced against two or more joint contractors, or executors, or administrators, if it shall appear at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of such joint contractors, or executors, or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgement or promise or otherwise, judgment may be given for the plaintiff as to such defendant or defendants against whom he shall recover. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall purport to be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the statute of limitations. (Mar. 3, 1901, 31 Stat. 1390, ch. 954, § 1271.)

### CODIFICATION

Section is comprised of first par. of section 1271 of act Mar. 3, 1901. The second par. of the act is classified to section 28-3006.

### CROSS REFERENCE

Statutes of limitation, see § 12-301 et seq.

### NOTES TO DECISIONS

Acknowledgment 2  
 Of partner 3  
 Estoppel 4  
 Evidence 5  
 Extension of time 6  
 Judgment for execution 7  
 New contracts 8  
 Notes secured by mortgage 9  
 Prior decisions 1  
 Sufficiency of acknowledgment 10  
 Summary judgment 11

#### 1. Prior decisions

*Mann v. Cooper* (2 App. D.C. 226); *Flannery v. Maine Red Granite Co.* (3 App. D.C. 395); *Pumphrey v. Boggan* (8 App. D.C. 449); *Cropley v. Eyster* (9 App. D.C. 373); *Reed v. Tierney* (12 App. D.C. 165).

#### 2. Acknowledgment

Defendant can not be permitted, after he has made an acknowledgment, the effect of which may be to remove the bar, or to prevent the running of the statute, as to a particular account, upon a different occasion, by his declaration or claim, to overcome, qualify, or defeat the effect of his previous acknowledgment. *Bean v. Wheatley* (13 App. D.C. 473).

A promise to pay to the creditor an indebtedness at such time as creditor should need it is not a conditional promise to pay but an acknowledgment and new promise, and sufficient to avoid bar of statute of limitations. *Cooper v. Olcott* (1 App. D.C. 123).

#### 3. Acknowledgment of partner

When debt is legally subsisting and not affected by the statute of limitations, an acknowledgment or promise of one partner will avoid the operation of the statute as to the rest. *Flannery v. Maine Red Granite Co.* (3 App. D.C. 395).

#### 4. Estoppel

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass v. Eiker, trading as T. E. Eiker & Co.* (D.C. Mun. App. 1957, 135 A. 2d 153).

#### 5. Evidence

Testimony of oral acknowledgment and promise to pay left within statute of limitations is admissible in action against one upon the debt when there is other and written evidence consisting of letters relating to the debt, as § 1271 does not make testimony of oral acknowledgment wholly inadmissible, but provides only that it shall not be sufficient evidence. *Shelley v. Westcott* (23 App. D.C. 135).

Parol evidence, if competent, is admissible as to indorsement of payment on note. *Madison v. White* (1932, 54 F. 2d 440, 60 App. D.C. 329).

Evidence of a new promise may be given under the general issue joined on the plea of limitations. *Pumphrey v. Boggan* (8 App. D.C. 449).

#### 6. Extension of time

Agreement for the extension of time for payment was good and binding upon the parties thereto; and consequently the right of action upon the note, by reason of such extension of time for payment, did not accrue until the 16th of March 1894; and as this action was commenced on the 19th of February 1897, therefore the statute of limitations formed no bar to the right of recovery. *Reed v. Tierney* (12 App. D.C. 165).

#### 7. Judgment for execution

Judgment for execution is a new judgment and statute of limitations begins to run from the new date. *Mann v. Cooper* (2 App. D.C. 226).

#### 8. New contracts

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then elapsed since the signing of the first note. *Garfinkle v. Needle* (1953, 201 F. 2d 202, 91 U.S. App. D.C. 342).

This section respecting form of acknowledgement in actions of debt, or upon the case, grounded upon any simple contract, in order to take case out of operation of statute of limitations, has reference only to a unilateral act or statement, and does not render ineffective a new promise supported by contemporaneous consideration. *Cafritz v. Koslow* (1948, 167 F. 2d 749, 83 U.S. App. D.C. 212).

Where plaintiff, in sister's action to recover money allegedly loaned to brother, was seeking to recover on basis of new relationship founded upon oral contract



whereby old indebtedness barred by limitations was incorporated as an element of consideration, old indebtedness, if it ever existed and remained unsatisfied, would afford consideration for new oral contract, since statute of limitations operated merely to extinguish the remedy and not the right. *Id.*

#### 9. Notes secured by mortgage

On petition by holder of one of two notes secured by mortgage for leave to participate in sale of mortgaged property in foreclosure proceedings by the holder of the other note, in this proceeding the bar of limitation, or lapse of time, does not apply, as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley v. Eyster* (9 App. D.C. 373).

#### 10. Sufficiency of acknowledgment

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *Grass v. Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the Securities and Exchange Commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such debts. *Id.*

"To effect a confirmation of a contract entered into during infancy, the act must have been done with knowledge that the contract was voidable." *Manning v. Gannon* (44 App. D.C. 98). See, also, *Gannon v. Manning* (42 App. D.C. 206).

"A distinct and unequivocal acknowledgment by the debtor of the debt as a still subsisting personal obligation constitutes an implied promise to pay it, and this, 'according to all the authorities, is all that is required to remove the statute in the case of a simple contract'" (referring to such a promise in writing). *Green v. Reeves* (47 App. D.C. 83). See, also, *Hornblower v. George Washington University* (31 App. D.C. 64, 14 Ann. Cas. 696); *Strong v. Andros* (34 App. D.C. 278, 19 Ann. Cas. 101).

Correspondence between parties, to be sufficient acknowledgment of indebtedness to toll the statute, must recognize subsisting personal obligation. *Hayden v. International Banking Corp.* (1930, 41 F. 2d 107, 59 App. D.C. 313).

The acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore v. Snider* (1940, 109 F. 2d 840, 71 App. D.C. 293, certiorari denied 60 S. Ct. 808, 309 U.S. 685, 84 L. Ed. 1029).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan v. Lincoln Inv. Corp.* (1940, 110 F. 2d 130, 71 App. D.C. 365).

#### 11. Summary judgment

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *Grass v. Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

### § 28-3006. New promise by quondam infant to be in writing—Ratification by conduct.

No action shall be maintained whereby to charge any person upon any acknowledgment of, or promise to pay, any debt contracted during infancy made after full age, except for necessities, unless such acknowledgment or promise shall be made by some writing signed by the party to be charged therewith: *Provided*, That nothing herein contained shall affect

ratification by conduct. (Mar. 3, 1901, ch. 854, § 1271, par. 2, as added June 30, 1902, 32 Stat. 542 ch. 1329.)

#### CODIFICATION

Section is comprised of second par. of section 1271 of act Mar. 3, 1901. The first par. of the act is classified to section 28-3005.

#### NOTES TO DECISIONS

##### 1. Tort action

Seller of automobile to minor representing himself to be of age, who disaffirms purchase, may nevertheless recover damage to car. *Dick Murphy, Inc. v. Holcer* (1932, 57 F. 2d 431, 61 App. D.C. 65).

### Chapter 31.—FRAUDULENT CONVEYANCES

[Transferred from chapter 4 of former Title 12]

#### Sec.

28-3101. Intent to defraud creditors.

28-3102. Intent to defraud purchasers.

28-3103. Executors may sue to vacate fraudulent transaction.

### § 28-3101. Intent to defraud creditors.

Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: *Provided*, That nothing herein shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: *Provided further*, That the question of fraudulent intent shall be deemed a question of fact and not of law. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1120.)

#### CROSS REFERENCES

Attachment or garnishment because of fraudulent conveyance, see § 16-501, 16-529.

Fraudulent attornment, see § 45-934.

#### NOTES TO DECISIONS

In general 1  
Consideration 2  
Construction 3  
Duty of court 4  
Fraudulent conveyance 5.50  
Evidence 5  
Good faith 6  
Intent of parties 7  
Mortgages 8  
Other persons 9  
Pleading, sufficiency of 9.50  
Presumptions 10  
Question of fact 11  
Quitclaim deeds 12  
Review 13  
Summary judgment 13.50  
Transfer to wife of bankrupt 14

##### 1. In general

By the terms of the statute a final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered, and this section likewise makes every conveyance of lands with intent to defraud creditors not merely voidable, but void. *Reilly v. Sabin* (1936, 81 F. 2d 259, 65 App. D.C. 125).

Where it did not appear that anyone but plaintiff was hindered, delayed, or defrauded by transfer of property sought to be set aside as fraudulent, judgment to the extent that it avoided transfer as against other persons



should be modified. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

A court should not enrich a fraudulent grantee at expense of parties not responsible for original grantor's attempt to avoid creditors. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Every case involving question whether debtor made fraudulent conveyances depends on its own circumstances. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Even if a conveyance is, on its face, presumptively fraudulent, it is susceptible of explanation. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

## 2. Consideration

Where there was substantial evidence to support findings that note and deed of trust recorded on date prior to date when the United States filed notice of tax lien were without consideration and in fraud of creditors, such findings were not clearly erroneous and hence judgment based on such findings would be affirmed. *H. Mill-off and S. Milloff v. United States and A. Goldkind* (1962, 306 F. 2d 783, 113 U.S. App. D.C. 176).

In action for judgment declaring plaintiff to be common-law wife of a defendant, and as such entitled to an inchoate right of dower in certain realty allegedly conveyed by him to his daughter before establishment of marriage, evidence, including undisputed testimony that defendant paid \$4,000 for property in question and conveyed it to his daughter, for \$10 which was the entire consideration, established that codefendant was not a purchaser for valuable consideration within meaning of this section. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

Words "valuable consideration" as used in portion of this section providing that such section shall not be construed to impair title of a purchaser for a "valuable consideration" means fair equivalent of the property conveyed. *Id.*

The sum of \$10, constituting the entire consideration allegedly paid for realty worth \$4,000, did not constitute "valuable consideration" within meaning of that term as used in this section providing that certain conveyances of realty made with intent of defrauding creditors shall be void except as against a purchaser for a valuable consideration, without notice. *Id.*

## 3. Construction

This section providing that conveyances made with intent of defrauding certain persons shall be void is entitled to liberal construction. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

## 4. Duty of court

Where issue regarding whether conveyance is fraudulent is presented to trial court, its duty is to determine from circumstances surrounding transaction of parties whether the intent proscribed by this section was present and in doing so, it should apply the rule that the parties intend the natural and probable consequences of their acts, and if the inevitable consequences of a conveyance are to hinder, delay or defraud creditors, the court must so hold notwithstanding denial of such intent by the parties. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

## 5. Evidence

Fraud must be shown by clear and convincing evidence and by evidence which is not equivocal that is, equally consistent with either honesty or deceit, but circumstantial evidence is sufficient to prove fraud. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Evidence sustained trial court's judgment setting aside, as in fraud of creditors, conveyances of realty. *Id.*

## 5.50. Fraudulent conveyance

Where company extended credit to its customers and received promissory notes which were endorsed in blank without recourse to bank as security for credit extended to the company ranging from 60 to 65 percent of the face value of pledged notes and company acted as bank's agent for collection and remitted payments to a special account

at the bank which was used to reduce debt owed by company to bank, and company submitted quarterly reports to bank indicating status of collections from consumer-debtors and company's book accounts indicated that consumer notes were pledged to the bank, the transfer of security from the company to the bank was not a fraudulent conveyance under District of Columbia law providing that transfers which are intended to hinder, delay or defraud creditors or transferor are voidable. *M. Stevan, Trustee et c. v. Union Trust Company et c., et al.* (1963, 316 F. 2d 687, 115 U.S. App. D.C. 36).

## 6. Good faith

In determining whether debtor's conveyances are fraudulent, the vital question is the good faith of the transactions. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

## 7. Intent of parties

In suit to set aside, as fraud on creditors, conveyances of realty, where grantee was found to be in same position as grantor, so far as knowledge and intent were concerned, and conveyance was found to have been fraudulent, neither grantor nor grantee could claim to have been injured by creditor's pursuit of one remedy rather than another. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

In creditor's suit to declare void certain transfers of title and of interests by debtor to others, record sustained determination that the transactions were consistent with an honest purpose and were free from fraud and wrongdoing. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Where it appears from all surrounding circumstances that acts of parties are consistent with an honest purpose, it is not an inevitable consequence that conveyance will hinder, delay or defraud creditors, and the court should find accordingly. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

## 8. Mortgages

A mortgage made with intent to hinder, delay, or defraud the bankrupt's creditors may be declared void. *Universal Dealers Co. v. Cromelin* (1940, 109 F. 2d 828, 71 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

The giving of the mortgage followed by withholding it from record pursuant to an agreement or understanding, operated to hinder, delay, and defraud the bankrupt's creditors as the parties are presumed to intend the natural and probable consequences of their own acts and whatever may have been the intention of the petitioner is immaterial. *In re Nolan Motor Co., Inc.* (1938, 25 F. Supp. 186, affirmed 109 F. 2d 828, 71 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

## 9. Other persons

Under this section providing that every conveyance of realty made with intent to defraud creditors or "other persons" having just claims shall be void as against persons so defrauded, a wife, in regard to her property rights arising from marriage, is one of the "other persons" protected. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

## 9.50. Pleading, sufficiency of

Judgment creditor's complaint alleging fraudulent conveyances of real estate was sufficient to allege fraudulent intent on part of debtor in making conveyance. *F. S. Bowen Electric Co., Inc. v. J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

## 10. Presumptions

In determining whether debtor made fraudulent transfer, certain rebuttable presumptions go into balance, in creditor's favor, but if it appears from circumstances that challenged acts of parties to transfer are consistent with an honest purpose, the presumptions are overcome. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

## 11. Question of fact

In District of Columbia, fraud is matter of fact, and therefore, where creditors established that conveyance had been made and recorded with intent to defraud,



it would not be necessary to success of their suit to set aside conveyance that they proved that grantor was insolvent. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Under this section, the question of fraudulent intent is a "question of fact" and not a "question of law". *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

#### 12. Quitclaim deeds

Where circumstances indicated that debtor was not owner of property or any part of it but at best had a claim which, in hands of creditor, might have had some nuisance value as a cloud on title, that real owner was debtor's brother and that deed from debtor to brother was in nature of a quitclaim to clear brother's title, evidence sustained findings and conclusion that conveyance did not violate this section regarding fraudulent conveyances. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

#### 13. Review

Finding that payment by insolvent corporation of its debt to its sole stockholder and managing director was made with intent to hinder or delay a creditor was not clearly erroneous and supported conclusion that transfer was void as against creditor. *Ferro Inc., and Powell Jr. v. John Thompson Beacon Windows, Ltd.* (1960, 278 F. 2d 280, 107 U.S. App. D.C. 400).

On appeal from judgment setting aside conveyance as fraud on creditors, sole function of Court of Appeals is to decide whether or not trial judge was clearly in error in being convinced by evidence presented, and it is not function of Court of Appeals to weigh evidence and it is not necessary that Court of Appeals itself find evidence on issue of fraud to be clear and convincing. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

#### 13.50 Summary judgment

Evidence in hearing on motion for summary judgment in action to set aside fraudulent conveyances showed existence of genuine issue of fact as to debtor's alleged fraudulent intent precluding summary judgment. *F. S. Bowen Electric Co., Inc. v. J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

#### 14. Transfer to wife of bankrupt

Where there was a fraudulent transfer of bankrupt's property to wife, conveyance was set aside in equity. *Harding v. Aaronson* (1934, 69 F. 2d 845, 63 App. D.C. 107).

### § 28-3102. Intent to defraud purchasers.

Every conveyance of any estate or interest in land or the rents and profits thereof, and every charge upon the same, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, shall, as against such purchasers, be void; but no such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it appear that the grantee in such conveyance, or the person to be benefited by such charge, was privy to the fraud intended. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1121.)

### NOTE TO DECISIONS

#### 1. Question of fact

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan v. Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

### § 28-3103. Executors may sue to vacate fraudulent transaction.

Any executor, administrator, receiver, assignee, or other trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate of property so held in trust, disaffirm, treat as void, and resist all acts done, transfers, and agreements made in fraud of the rights of any creditor, including themselves and others interested in any estate or property held by or of right belonging to any such trustee or estate; and every person who in fraud of the rights of creditors and others shall have received, taken, or in any manner interfered with the estate, property, or effects of any deceased person or insolvent corporation, association, partnership, or individual shall be liable, in the proper action, to the executors, administrators, receivers, or other trustees of such estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1122.)

### NOTES TO DECISIONS

Action to avoid deed 1  
Increase of rights 2  
Trust, enforcement of 3

#### 1. Action to avoid deed

Section authorizes executors to file suit setting aside or canceling a deed executed by testator and to collect the expenses incident thereto. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

#### 2. Increase of rights

This section is "procedural", and the person for whose benefit transfer is sought to be set aside can get no increased substantive rights because administrator is bringing the suit. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Where administratrix of deceased grantor sought to set aside transfers that allegedly had illegal purpose of defeating creditors and administratrix did not seek to benefit creditors, but to set aside the transfers for benefit of grantor's heirs, the heirs obtained no additional rights because their interests were represented by administratrix. *Id.*

#### 3. Trust, enforcement of

Administratrix of deceased grantor could enforce "resulting trust" and recover proceeds of realty on behalf of heirs of grantor, notwithstanding evidence that transfers which administratrix sought to set aside had illegal purpose of defeating grantor's creditors. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

## TITLE 29.—CORPORATIONS

Chap.  
10. Nonprofit Corporations..... 29-1001

### Chapter 8.—COOPERATIVE ASSOCIATIONS

#### § 29-818. Directors.

##### NOTES TO DECISIONS

##### 1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by the board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

#### § 29-821. Referendum on acts of directors.

##### NOTES TO DECISIONS

##### 1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

### Chapter 9.—BUSINESS CORPORATIONS (1954)

Sec.

29-947. Action without a meeting.  
29-959. Verification no longer required.

#### § 29-902. Definitions.

##### NOTES TO DECISIONS

##### 1. Insolvency

In action by judgment creditor of corporation to impress a constructive trust on property conveyed by corporation to defendant officer and majority shareholder, evidence supported finding of financial incapacity of the corporation at the time of the conveyance. *L. N. Tauber v. M. Noble* (D.C. Mun. App. 1961, 172 A. 2d 552).

#### § 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided*, That nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(5).)

##### AMENDMENT

1963—Section 1(5) of act Sept. 3, 1963, amended the section by striking therefrom the last proviso clause.

##### EFFECTIVE DATE OF 1963 AMENDMENTS

Section 3 of act Sept. 3, 1963 [amending sections 29-903, 29-904, 29-907a, 29-907b, 29-916, 29-927g, 29-933h,

29-933i, 29-936, 29-938d, 29-941, 29-947 and adding section 29-959], provided that: "This Act shall become effective sixty days after the date of its enactment".

##### POPULAR NAME

Section 2 of act Sept. 3, 1963, cited to text [amending sections 29-903, 29-904, 29-907a, 29-907b, 29-916, 29-927g, 29-933h, 29-933i, 29-936, 29-938d, 29-941, 29-947, and adding section 29-959], provided that: "This Act may be cited as the 'District of Columbia Business Corporation Act Amendments of 1963'."

#### § 29-904. General powers.

\* \* \* \* \*

(h) \* \* \* No corporation formed hereunder shall plead any statutes against usury in any action.

\* \* \* \* \*

(As amended Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(1).)

##### AMENDMENT

1963—Section 1(1) of act Sept. 3, 1963, amended subsection (h) by adding the following "No corporation formed hereunder shall plead any statutes against usury in any action."

##### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### § 29-907a. Change of registered office or registered agent.

\* \* \* \* \*

(e) The registered agent of one or more domestic corporations may change the address of the registered office of such domestic corporation or corporations by filing with the Commissioners a statement setting forth:

- (1) the name of the registered agent;
- (2) the present address, including street and number, if any, of such registered agent;
- (3) the names of the corporation or corporations represented by such registered agent at such address;
- (4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and
- (5) the date upon which such change will take place.

(f) Such statement shall be executed in duplicate by such registered agent in his individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as prescribed in this chapter:

- (1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;



(2) file one of such duplicate originals in their office; and

(3) return the other duplicate original to the registered agent.

(g) The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Commissioners or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (As amended Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(2).)

#### AMENDMENTS

1963—Section 1(2) of act Sept. 3, 1963, amended section by adding subsection (e), (f) and (g).

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

### § 29-907b. Registered agent as an agent for service.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Commissioners shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Commissioners shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(3).)

#### AMENDMENTS

1963—Section 1(3) of act Sept. 3, 1963, amended subsection (b) to read as above set out. For comparison with previous subsection (b) see main volume of the code.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

### § 29-916. Board of directors.

Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(4).)

#### AMENDMENTS

1963—Section 1(4) of act Sept. 3, 1963, amended section by adding the sentence above set out relating to compensation of directors.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

### § 29-927g. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in the District of Columbia, and in every case it shall file with the Commissioners—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding;

(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) a post office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them.

(As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(6).)

#### AMENDMENTS

1963—Section 1(6) of act Sept. 3, 1963, amended subsection (b) by striking out "and" in paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and the word "and" and by adding thereto the paragraph numbered (4).

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

### § 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

#### NOTES TO DECISIONS

#### 1. Assets, disposition of

Corporation's transfer of its major league baseball franchise from one location to another was not such disposition of assets as required approval of two-thirds of stockholders, under District of Columbia Law. *H. G. Murphy v. Washington American Baseball Club, Inc.*, et al. (1961, 293 F. 2d 522, 110 U.S. App. D.C. 334).

### § 29-933h. Change of registered office or registered agent of foreign corporation.

(f) A registered agent of one or more foreign corporations may change the address of the regis-

tered office of such foreign corporation or corporations by filing with the Commissioners a statement setting forth:

- (1) the name of the registered agent;
  - (2) the present address, including street and number, if any, of such registered agent;
  - (3) the names of the corporation or corporations represented by such registered agent at such address;
  - (4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and
  - (5) the date upon which such change will take place."
- (g) Such statement shall be executed in duplicate by such registered agent in his individual name but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or a vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed:

- (1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
  - (2) file one of such duplicate originals in their office; and
  - (3) return the other duplicate original to the registered agent.
- (h) The change of address of such registered agent as to each corporation named in such statement shall become effective upon the filing of such statement by the Commissioners or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(7).)

#### AMENDMENTS

1963—Section 1(7) of act Sept. 3, 1963, amended the section by adding subsections (f), (g) and (h) thereto.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

### § 29-933i. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to transact business in the District shall be an agent of such foreign corporation upon whom process against such corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to transact business in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the

certificate of authority of a foreign corporation shall be revoked, then the Commissioners shall be an agent of such foreign corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to such corporation at its principal office in the State under the laws of which it is organized as the same appears in the records of the Commissioners.

(c) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Commissioners its agent and representatives upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail addressed to such corporation at the address given in such affidavit.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law. (As amended Sept. 3, 1963, 77 Stat. 138, Pub. L. 88-111, § 1(8).)

#### AMENDMENTS

1963—Section 1(8) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see section in main volume of the code.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### NOTES TO DECISIONS

##### 1. Service on Commissioners

District of Columbia statute making service upon officer of foreign corporation transacting business in District without place of business or resident agent therein effectual as to suits growing out of contracts entered into therein and statute providing that foreign corporation transacting business in District without certificate shall be deemed to have appointed commissioners its agents are to be read in *pari materia*, and, in respect to action on District contract, service on commissioners was valid. *Central Insurance Agency Co., Inc. v. Financial Credit Corp., et al.* (1963, 222 F. Supp. 627).

Service was quashed and complaint dismissed in treble damage action against foreign corporation under Clayton Act where plaintiff failed to establish that it had complied with statutory requirement of delivering to and leaving with the Commissioners of District of Columbia,



or with any clerk having charge of their office, copies of process. *Curtis Brothers, Inc. v. Thomasville Chair Co.* (1961, 292 F.2d 774, 110 U.S. App. D.C. 281).

#### § 29-935. Commissioners—Duties and functions.

##### DELEGATION OF FUNCTIONS

Org. Ord. No. 101, 54-1980, dated Sept. 1954, and amended Oct. 14, 1954, Nov. 30, 1954, June 10, 1955, Feb. 19, 1960, and May 29, 1962, was superseded by order No. 63-197, dated Jan. 24, 1963. See New Order in appendix to title 1.

#### § 29-936. Fees and license taxes, and charges.

(b) The Commissioners shall charge for—

- (1) filing articles of incorporation, \$20;
- (2) filing amendment to articles of incorporation, \$20;
- (3) filing articles of merger or consolidation, \$20;
- (4) filing a statement of intent to dissolve, \$5;
- (5) filing articles of reincorporation, \$20;
- (6) filing articles of dissolution, \$10;
- (7) filing statement of change of address of registered office or change of registered agent, or both, \$1;
- (8) filing statement of the establishment of a series of shares, \$5;
- (9) filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, \$20;
- (10) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;
- (11) filing notice of transfer of a reserved corporate name, \$5;
- (12) filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, \$20;
- (13) filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the District, \$5;
- (14) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, \$20;
- (15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$5;
- (16) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$50;
- (17) filing any other statement or report, except an annual report, of a domestic or a foreign corporation, \$1;
- (18) for indexing each document filed, except an annual report, of a domestic or a foreign corporation, \$2;
- (19) for furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, \$5;
- (20) filing by a registered agent of corporations of a statement of change of address of such registered agent, \$5, plus \$1 for each corporation, domestic or foreign, listed in such statement; and
- (21) furnishing a certificate as to the status of a corporation, domestic or foreign, or as to the

existence or nonexistence of facts relating to corporations, domestic or foreign, such fee as they may, from time to time, determine to be reasonable.

(As amended Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(9).)

##### AMENDMENTS

1963—Section 1(9) of act Sept. 3, 1963, amended subsection (b) by adding paragraphs (20) and (21) thereto.

##### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### § 29-938d. Reinstatement of proclaimed corporations.

(a) A corporation, the articles of incorporation or certificate of authority of which have been revoked by proclamation, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioners a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioners after the period for reservation of the name has expired and if they find that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph, the proclaimed corporation shall set forth in its petition for reinstatement its name at the time of issuance of the proclamation of revocation and its new name, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) If the Commissioners find that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, they shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed—

- (1) endorse on each of such duplicate originals and any such annual report or reports the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals and any such annual report or reports in their office;
- (3) issue a certificate of reinstatement to which they shall affix the other duplicate original;
- (4) deliver such certificate of reinstatement and other duplicate original to the corporation or its representative.

(d) Upon the issuance of the certificate of reinstatement, the revocation proceedings theretofore taken as to such corporation by proclamation shall be deemed to be annulled, and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (As amended Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(10).)

## AMENDMENTS

1963—Section 1(10) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see main volume of the code.

## EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

## § 29-941. Effect of nonpayment of fees.

(a) \* \* \* Nothing in this section shall prevent the filing, without the payment of all such fees, charges and penalties, of a written notice of resignation by a registered agent of a corporation, domestic or foreign.

\* \* \* \* \*

(As amended Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(11).)

## AMENDMENT

1963—Section 1(11) of act Sept. 3, 1963, amended subsection (a) by adding thereto the sentence beginning with the word "Nothing" and ending with the word "foreign".

## EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

## § 29-947. Action without a meeting.

Any action required or permitted to be taken at a meeting of the shareholders of a corporation or of the board of directors or of any committee thereof may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, or by all of the members of the board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the shareholders or the board or the committee. Such consent shall have the same force and effect as a unanimous vote of the shareholders or the board or the committee, as the case may be, and may be stated as such in any article or document filed with the Commissioners under this chapter. (As amended Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(12).)

## AMENDMENTS

1963—Section 1(12) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see section in main volume of the code.

## EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

## § 29-959. Verification no longer required.

A requirement in this chapter that any instrument be verified by oath need not be complied with after November 2, 1963. A person who signs any instrument delivered to the Commissioners pursuant to this chapter knowing it to contain a misstatement of fact shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or both, in the discretion of the court. (Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(13).)

## EFFECTIVE DATE

Section 3 of act Sept. 3, 1963, provided: "This Act shall become effective sixty days after the date of its enactment."

## Chapter 10.—NONPROFIT CORPORATIONS

## Sec.

- 29-1001. Short title.
- 29-1002. Definitions.
- 29-1003. Applicability.
- 29-1004. Purposes.
- 29-1005. General powers.
- 29-1006. Defense of ultra vires.
- 29-1007. Corporate name.
- 29-1008. Reserved name.
- 29-1009. Registered office and registered agent.
- 29-1010. Change of registered office or registered agent.
- 29-1011. Registered agent as an agent for service.
- 29-1012. Members.
- 29-1013. Bylaws.
- 29-1014. Meetings of members.
- 29-1015. Notice of members' meetings.
- 29-1016. Voting.
- 29-1017. Quorum.
- 29-1018. Board of directors.
- 29-1019. Number, election, classification, and removal of directors.
- 29-1020. Vacancies.
- 29-1021. Quorum of directors.
- 29-1022. Committees.
- 29-1023. Place and notice of directors' meetings.
- 29-1024. Officers.
- 29-1025. Removal of officers.
- 29-1026. Books and records.
- 29-1027. Shares of stock and dividends prohibited.
- 29-1028. Loans to directors and officers prohibited.
- 29-1029. Incorporators.
- 29-1030. Articles of incorporation.
- 29-1031. Filing of articles of incorporation.
- 29-1032. Effect of issuance of certificate of incorporation.
- 29-1033. Organization meetings.
- 29-1034. Right to amend articles of incorporation.
- 29-1035. Procedure to amend articles of incorporation.
- 29-1036. Articles of amendment.
- 29-1037. Filing of articles of amendment.
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- 29-1039. Procedure for merger.
- 29-1040. Procedure for consolidation.
- 29-1041. Approval of merger or consolidation.
- 29-1042. Articles of merger or consolidation.
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- 29-1044. Effect of merger or consolidation.
- 29-1045. Merger or consolidation of domestic and foreign corporations.
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- 29-1047. Voluntary dissolution.
- 29-1048. Distribution of assets.
- 29-1049. Plan of distribution.
- 29-1050. Revocation of voluntary dissolution proceedings.
- 29-1051. Articles of dissolution.
- 29-1052. Filing of articles of dissolution.
- 29-1053. Involuntary dissolution.
- 29-1054. Venue and process.
- 29-1055. Jurisdiction of court to liquidate assets and affairs of corporation.
- 29-1056. Procedure in liquidation of corporation by court.
- 29-1057. Qualification of receivers.
- 29-1058. Filing of claims in liquidation proceedings.
- 29-1059. Discontinuance of liquidation proceedings.
- 29-1060. Decree of dissolution.
- 29-1061. Filing of decree of dissolution.
- 29-1062. Deposits in registry of court.
- 29-1063. Survival of remedy after dissolution.
- 29-1064. Admission of foreign corporation.
- 29-1065. Powers of foreign corporation.
- 29-1066. Corporate name of foreign corporation.
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#### § 29-1001. Popular name.

This chapter shall be known and may be cited as the "District of Columbia Nonprofit Corporation Act." (Aug. 6, 1962, 76 Stat. 265, Pub. L. 87-569, § 1.)

##### EFFECTIVE DATE

Section 110 act Aug. 6, 1962 (classified to § 29-1099k), provides as follows: "This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval". [Aug. 6, 1962]

#### § 29-1002. Definitions.

As used in this chapter, unless the context otherwise requires, the term—

(a) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(b) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of the District of Columbia, for a purpose or purposes for which a corporation might be organized under this chapter, but shall not include a corporation created by a special Act of Congress.

(c) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing

in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation as permitted in this chapter.

(d) "Articles of incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special Act of Congress, means such special Act and any amendments thereto made by special Act of Congress, or pursuant to general law.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(g) "Board of directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(h) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(i) "Commissioners" means the Commissioners of the District of Columbia or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter.

(j) "District" means the District of Columbia.

(k) "The court", except where otherwise specified, means the United States District Court for the District of Columbia. (Aug. 6, 1962, 76 Stat. 266, Pub. L. 87-569, § 2.)

##### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1003. Applicability.

(a) The provisions of this chapter relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this chapter.

(b) The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in the District of Columbia for a purpose or purposes for which a corporation might be organized under this chapter.

(c) No corporation eligible to be formed under this chapter shall be incorporated under any other Act or statute now in force in the District of Columbia except that those organizations eligible to be formed under the Acts or parts of Acts referred to in section 49-303, may be formed under those Acts or part of Acts. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 85-569, § 3.)

##### EFFECTIVE DATE

See section 29-1099k.

##### CROSS REFERENCE

For other provisions dealing with nonprofit organizations, see chapters 3, 4, 5, 6 and 8 of title 29, chapter 9 of title 31, and title 32.

#### § 29-1004. Purposes.

Corporations may be organized under this chapter for any lawful purpose or purposes including, but

not limited to, one or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that cooperative organizations or organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 4.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1005. General powers.

Each corporation shall have power—

(a) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name;

(c) to have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) to lend money to and otherwise assist its employees other than its officers and directors;

(g) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, State, territory, governmental district, or municipality or of any instrumentality thereof;

(h) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

(i) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) to conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this chapter in any part of the world;

(k) to elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(l) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws

of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(m) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;

(n) to indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;

(o) to cease its corporate activities and surrender its corporate franchise;

(p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 5.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1006. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation.

(c) In a proceeding by the Commissioners, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioners to enjoin the



corporation from the transaction of unauthorized acts. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 6.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1007. Corporate name.

The corporate name—

(a) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(b) shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation whether for profit or not for profit authorized to transact business or conduct affairs in the District, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or in accordance with the provisions of the District of Columbia Business Corporation Act;

(c) shall be transliterated into letters of the English alphabet, if it is not in English;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress.

(Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 7.)

## REFERENCE IN TEXT

The District of Columbia Business Corporation Act, referred to in text, is set out in chapter 9 of title 29, D.C. Code.

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1008. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by any person or corporation, domestic or foreign, by delivering to the Commissioners an application to reserve a specified corporate name, executed by the applicant. If the Commissioners find that the name is available for corporate use, they shall reserve the same for the exclusive use of the applicant for a period of sixty days. Such reservation may be renewed for an additional period of sixty days and for good cause shown such reservation may be further extended for a reasonable period.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by delivering to the Commissioners a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 8.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1009. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office, which may be, but need not be, the same as its principal office;

(b) a registered agent, which agent may be either an individual resident of the District of Columbia whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District of Columbia and having an office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 9.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1010. Change of registered office or registered agent.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the office of its registered agent as changed will be identical; and

(7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a corporation may resign as such agent by delivering written notice thereof, executed in triplicate, to the Commissioners, who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its registered office and another copy to the corpora-

tion at its principal office in the District of Columbia as shown by the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or other charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 10.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1011. Registered agent as an agent for service.

(a) The registered agent appointed by a corporation as provided in this chapter shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them or with any clerk having charge of their office duplicate copies of such process, notice, or demand. In the event that any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 11.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1012. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 12.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1013. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 13.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1014. Meetings of members.

(a) Meetings of members may be held at such place within or without the District of Columbia as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, the secretary, the board of directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least one-twentieth of the votes entitled to be cast at such meeting. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 14.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1015. Notice of members' meetings.

Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten or more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 15.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1016. Voting.

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact.



No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted members. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 16.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1017. Quorum.

(a) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members having at least one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

(b) Unless otherwise provided by the articles of incorporation or the bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 17.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1018. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the District of Columbia or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 18.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1019. Number, election, classification, and removal of directors.

(a) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 19.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1020. Vacancies.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the board of directors, though less than a quorum of the board, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 20.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1021. Quorum of directors.

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the

number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter or by the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 21.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1022. Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 22.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1023. Place and notice of directors' meetings.

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, and upon such notice as may be prescribed in the bylaws or, where not inconsistent with the bylaws, by resolution of the board of directors. A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 23.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1024. Officers.

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one or more vice presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed

at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the bylaws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 24.)

## § 29-1025. Removal of officers.

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 25.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1026. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the District of Columbia a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 26.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1027. Shares of stock and dividends prohibited.

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members or others as permitted by this chapter. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 27.)



## EFFECTIVE DATE

See section 29-1099k.

## § 29-1028. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 28.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1029. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Commissioners articles of incorporation for such corporation. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 29.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1030. Articles of incorporation.

(a) The articles of incorporation shall set forth—

- (1) the name of the corporation;
- (2) the period of duration, which may be perpetual;
- (3) the purpose or purposes for which the corporation is organized;
- (4) if the corporation is to have no members, a statement to that effect;
- (5) if the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote;
- (6) if the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed; or that the manner of such election or appointment of such directors shall be provided in the bylaws;
- (7) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) the number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify;

(10) the name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 30.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1031. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of incorporation conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of incorporation to which they shall affix the other duplicate original;

(4) deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

(Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 31.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1032. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 32.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1033. Organization meetings.

(a) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States at the call of a majority of the directors so named for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the bylaws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the

meeting shall give at least five days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting: *Provided, however*, That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five days' notice, for such purposes as shall be stated in the notice of meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 33.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1034. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided*, That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 34.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1035. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(e) Any number of amendments may be submitted and voted upon at any one meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 35.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1036. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) the amendment so adopted;

(c) where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 36.)

### § 29-1037. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of amendment to which they shall affix the other duplicate original;

(4) deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 37.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1038. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 38.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1039. Procedure for merger.

Any two or more domestic corporations subject to the provisions of this chapter may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the



members of each such board, approve a plan of merger setting forth—

(a) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 39.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1040. Procedure for consolidation.

Any two or more domestic corporations subject to the provisions of this chapter may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth—

(a) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 40.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1041. Approval of merger or consolidation.

A plan of merger or consolidation shall be approved in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members.

(c) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(e) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 41.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1042. Articles of merger or consolidation.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and the corporate seal of each such corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was approved, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (b) a statement that such amendment was approved by a consent in writing signed by all members entitled to vote with respect thereto;

(3) where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was approved and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Commissioners.

(c) If the Commissioners find that such articles conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger or a certificate of consolidation to which they shall affix the other duplicate original;

(4) deliver the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto, to the surviving or new corporation, as the case may be, or its representative.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 42.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1043. Effective date of the merger or consolidation.

Upon the issuance of the certificate of merger, or the certificate of consolidation by the Commissioners, the merger or consolidation shall be effected. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 43.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1044. Effect of merger or consolidation.

When such merger or consolidation has been effected—

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or other property, or any interest therein, vested in any of such corporations shall not revert unless required by the terms of the gift, bequest, or devise, or be in any way impaired by reason of such merger or consolidation;

(e) such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgement as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation;

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorpo-

ration of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 44.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1045. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State or country under which each such foreign corporation is organized.

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State or country other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to carry on its affairs in the District of Columbia, and in every case it shall deliver to the Commissioners, who shall file—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) a post office address to which the Commissioners may mail a copy of any service of process, notice, or demand against the corporation that may be served on them.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (Aug. 6, 1962, 76 Stat. 281, Pub. L. 87-569, § 45.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1046. Sale, lease, exchange, or mortgage of assets.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution



recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members.

(c) At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(e) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 282, Pub. L. 87-569, § 46.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1047. Voluntary dissolution.

A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 47.)

#### EFFECTIVE DATE

See section 29-1099k.

#### CROSS REFERENCE

See also chapter 8, title 29.

### § 29-1048. Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution adopted as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 48.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1049. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a



meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 49.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1050. Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners, as hereinafter provided, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Commissioners, notice of such revocation shall be given to them in writing. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 50.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1051. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made therefor, and all of the remaining property

and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth—

(a) the name of the corporation;

(b) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(d) that all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter;

(f) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 51.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1052. Filing of articles of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioners.

(b) If the Commissioners find that such articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution to which they shall affix the other duplicate original;

(4) deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings,



and appropriate corporate action by members, directors, and officers as provided in this chapter. (Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 52.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1053. Involuntary dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Commissioners in the name of the District of Columbia when it is made to appear to the court that—

(1) the franchise of the corporation was procured through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for ninety days to appoint and maintain a registered agent as provided in this chapter; or

(4) the corporation has failed for ninety days after change of its registered office or registered agent to deliver to the Commissioners a statement of such change.

(b) At least thirty days before any action for the involuntary dissolution of a corporation shall be filed by the Commissioners, they shall notify the corporation by certified or registered mail addressed to such corporation at its registered office a notice of their intention to file such suit and the reason therefor. If, before action is filed, the corporation as the case may be shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this chapter, or deliver to the Commissioners the required statement of change of registered agent, the Commissioners shall not file an action against such corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection the corporation shall as the case may be appoint or maintain a registered agent as provided in this chapter, or shall deliver to the Commissioners the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 53.)

## EFFECTIVE DATE

See section 29-1099k.

## CROSS REFERENCE

See also chapter 8, title 29.

## § 29-1054. Venue and process.

In every action for the involuntary dissolution of a corporation hereinbefore provided, summons shall issue and be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The

Commissioners shall cause a copy of such notice to be mailed by registered or certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 54.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1055. Jurisdiction of court to liquidate assets and affairs of corporation.

The United States District Court for the District of Columbia shall have full power to liquidate the assets and affairs of a corporation—

(a) in any action by a member or director when it is made to appear—

(1) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(3) that the corporate assets are being misapplied or wasted; or

(4) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor—

(1) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) it shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

(Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 55.)

## EFFECTIVE DATE

See section 29-1099k.

**§ 29-1056. Procedure in liquidation of corporation by court.**

(a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

(d) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 56.)

**EFFECTIVE DATE**

See section 29-1099k.

**§ 29-1057. Qualification of receivers.**

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the District of Columbia, and shall in all cases give such bond as the court may direct with such sureties as the court may require. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 57.)

**§ 29-1058. Filing of claims in liquidation proceedings.**

In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 58.)

**§ 29-1059. Discontinuance of liquidation proceedings.**

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 59.)

**§ 29-1060. Decree of dissolution.**

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property



and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 60.)

EFFECTIVE DATE

See section 29-1099k.

§ 29-1061. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be delivered to the Commissioners, who shall file the same. No fee shall be charged by the Commissioners for the filing thereof. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 61.)

§ 29-1062. Deposits in registry of court.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in the registry of the court and shall be paid over to such person or to his legal representative upon proof satisfactory to the court of his right thereto. If any portion thereof remain in the registry after ten years from the date of deposit, it shall escheat to the District of Columbia and shall be paid into the Treasury of the United States for the credit of the said District. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 62.)

EFFECTIVE DATE

See section 29-1099k.

§ 29-1063. Survival of remedy after dissolution.

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 63.)

§ 29-1064. Admission of foreign corporation.

(a) A foreign corporation to which this chapter is applicable shall procure a certificate of authority from the Commissioners before it conducts affairs in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in the District any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by rea-

son of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) Without excluding other activities which may not constitute conducting affairs in the District of Columbia, a foreign corporation shall not be considered to be conducting affairs in the District for the purposes of the chapter, by reason of conducting an isolated transaction completed in thirty days and not in the course of a number of repeated transactions of like nature or by reason of any one or more of the following activities in the District:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages, or liens on real or personal property;

(5) collecting its debts, taking security for the same, or enforcing any rights in property securing the same.

(Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 64.)

EFFECTIVE DATE

See section 29-1099k.

§ 29-1065. Powers of foreign corporation.

(a) No foreign corporation to which this chapter is applicable shall conduct in the District any affairs which may not be conducted by a corporation organized under this chapter.

(b) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 65.)

EFFECTIVE DATE

See section 29-1099k.

§ 29-1066. Corporate name of foreign corporation.

No certificate of authority shall be issued to a foreign corporation—

(a) which has a name the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the

District, or that of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, or a name, the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or in accordance with the provisions of the District of Columbia Business Corporation Act;

(b) unless the corporate name of such corporation is in English, or is transliterated into letters of the English alphabet if it is not in English. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 66.)

#### REFERENCE IN TEXT

The District of Columbia Business Corporation Act, referred to in text, is set out in chapter 9 of title 29 of the D.C. Code.

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1067. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in the District of Columbia shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in the District until it has changed its name to a name which is available to it under the laws of the District. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 67.)

### § 29-1068. Application for certificate of authority.

A foreign corporation, in order to procure a certificate of authority to conduct affairs in the District of Columbia, shall make application therefor to the Commissioners, which application shall set forth—

(a) the name of the corporation and the State or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address, including street and number, if any, of the principal office of the corporation in the State or country under the laws of which it is incorporated;

(d) the address, including street and number, if any, of the proposed registered office of the corporation in the District, and the name of its proposed registered agent in the District at such address;

(e) a brief statement of the purposes it proposes to pursue in conducting its affairs in the District;

(f) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(g) such additional information as may be necessary or appropriate in order to enable the Commissioners to determine whether such corporation is entitled to a certificate to conduct affairs in the District.

Such application shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 68.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1069. Filing of application for certificate of authority.

(a) There shall be delivered to the Commissioners—

(1) duplicate originals of the application of the corporation for a certificate of authority;

(2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State or country under the laws of which it is incorporated.

(b) If the Commissioners find that such application conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file in their office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to conduct affairs in the District to which they shall affix the other duplicate original application;

(4) deliver the certificate of authority, together with the duplicate original of the application affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 69.)

#### EFFECTIVE DATE

See section 29-1099k.

### § 29-1070. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Commissioners, the corporation shall have the right to conduct affairs in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such authority as provided in this chapter. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 70.)

### § 29-1071. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in the District shall have and continuously maintain in the District—

(a) a registered office which may be, but need not be, the same as its principal office in the District;

(b) a registered agent, which agent may be either an individual resident in the District whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, having a business office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 71.)

### § 29-1072. Change of registered office or registered agent of foreign corporation.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

(1) the name of the corporation;



(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by its board of directors, or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a foreign corporation may resign as such agent by delivering a written notice thereof, executed in duplicate, to the Commissioners who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated as the same appears in the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 72.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1073. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to conduct affairs in the District shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corpora-

tion, may be served. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to conduct affairs in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated, as the same appears in the records of the Commissioners.

(c) If any foreign corporation shall conduct affairs in the District without a certificate of authority, it shall by conducting such affairs be deemed to have thereby appointed the Commissioners its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivery to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation, and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered or certified mail, addressed to such corporation at the address given in such affidavit.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 293, Pub. L. 87-569, § 73.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1074. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in the District are amended, such foreign corporation shall, within ninety days after such amendment becomes effective, file with the Commissioners a copy of such amendment duly certified by the proper

officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in the District, nor authorize such corporation to conduct affairs in the District under any other name than the name set forth in its certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 74.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1075. Merger of foreign corporation.

Whenever a foreign corporation authorized to conduct affairs in the District shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within ninety days after such merger becomes effective, deliver to the Commissioners a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to pursue in the District. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 75.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1076. Amended certificate of authority.

(a) A foreign corporation authorized to conduct affairs in the District shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioners.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the delivering of duplicate originals thereof to the Commissioners, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 76.)

### § 29-1077. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to conduct affairs in the District may withdraw from the District upon procuring from the Commissioners a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Commissioners an application for withdrawal.

(b) The application for withdrawal shall state—

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in the District;

(3) that the corporation surrenders its authority to conduct affairs in the District;

(4) that the corporation revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the District during the time the corporation was authorized to conduct affairs in the District may thereafter be made on such corporation by service thereof on the Commissioners;

(5) a post office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 77.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1078. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioners. If the Commissioners find that such application conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of withdrawal to which they shall affix the other duplicate original;

(4) deliver the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, to the corporation or its representative.

(b) Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 78.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1079. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to conduct affairs in the District may be revoked by the Commissioners when they find that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or has abused the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for a period of ninety days to appoint and maintain a registered agent in the District; or



(5) the corporation has failed for ninety days after change of its registered office or registered agent to file with the Commissioners a statement of such changes; or

(6) the corporation for a period of two years has not conducted any affairs in the District; or

(7) the corporation has failed to file with the Commissioners a duly certified copy of each amendment to its articles of incorporation within ninety days after such amendment becomes effective; or

(8) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioners unless (1) they shall have given the corporation not less than thirty days' notice thereof by certified or registered mail addressed to such corporation at its principal office in the state or country under the laws of which such corporation is organized, as the same appears in the records of the Commissioners or at its registered office in the District, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or shall fail to appoint a registered agent in the District, or shall fail to file the required statement of change of registered office or registered agent, or shall fail to file a statement showing that it has conducted affairs in the District within a period of two years, or shall fail to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 79.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1080. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioners shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in their office;

(3) mail the other such certificate to such corporation at its registered office in the District or to its principal place of business as the same appears in the records of the Commissioners.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 80.)

#### § 29-1081. Application to foreign corporations conducting affairs on the effective date of this chapter.

Foreign corporations conducting affairs in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority

and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this Act for conducting affairs without a certificate of authority. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 81.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1082. Conducting affairs without certificate of authority.

(a) No foreign corporation which is conducting affairs in the District without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in the District, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of the District.

(c) A foreign corporation which conducts affairs in the District without a certificate of authority shall be liable to the District for the years or parts thereof during which it conducted affairs in the District without a certificate of authority, in an amount equal to all fees, penalties, and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in the District as required by this chapter and thereafter filed all reports required by this chapter; and, in addition thereto, it shall be liable for a penalty to be assessed by the Commissioners of not in excess of \$200. The Commissioners shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 82.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1083. Annual report of domestic and foreign corporations.

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in the District, shall prepare an annual report setting forth—

(1) the name of the corporation and the State or country under the laws of which it is incorporated;

(2) the address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address,



and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the State or country under the laws of which it is incorporated;

(3) a brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in the District;

(4) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) such annual report shall be made on forms prescribed and furnished by the Commissioners, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 83.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1084. Filing of annual report of domestic and foreign corporations.

Such annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Commissioners. Proof to the satisfaction of the Commissioners that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Commissioners find that such report conforms to law, they shall file the same. If they find that it does not so conform, they shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Commissioners in sufficient time to be filed prior to the first day of July of the year in which it is due. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 84.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1085. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorporated under this chapter, or any corporation which has elected to accept this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required

by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 85.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1086. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioners shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioners shall be filed in their office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, as in this chapter provided with respect to dissolved corporations.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to pay, satisfy, and discharge their liabilities and obligations and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, as in this chapter provided with respect to dissolved corporations, but not for the purpose of continuing to conduct the affairs for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced



be continued a body corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 86.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1087. Penalty for conducting affairs after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 87.)

### § 29-1088. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioners that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioners are authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 88.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1089. Reservation of name of proclaimed corporation.

The Commissioners shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 89.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1090. Reinstatement of proclaimed corporations.

(a) A domestic corporation, the articles of incorporation of which have been revoked, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioners a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter. The Commissioners, if they find that all such documents conform to

law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, shall file them in their office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioners after the period for reservation of the name has expired and if they find that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph the proclaimed corporations shall set forth in its petition for reinstatement its name at the time its articles of incorporation were proclaimed void and the new name by which the corporation will thereafter be known, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) A foreign corporation whose certificate of authority has been revoked shall, upon reentering the District, comply with all of the requirements of law applicable to an original application for a certificate of authority, including the payment of the filing fee for filing an application for a certificate of authority, but it need not file again a copy of its articles of incorporation or any amendment thereof that is then on file with the Commissioners. After the revocation of the certificate of authority of a foreign corporation, the Commissioners shall retain the articles of incorporation and amendments theretofore filed and the original application for a certificate of authority for a period of ten years. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 90.)

## EFFECTIVE DATE

See section 29-1099k.

### § 29-1091. Penalties imposed upon corporations.

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of \$5 to be assessed by the Commissioners. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 91.)

### § 29-1092. Fees for filing documents and issuing certificates.

The Commissioners shall charge and collect for—

(a) filing articles of incorporation and issuing a certificate of incorporation, \$10;

(b) filing articles of amendment and issuing a certificate of amendment, \$5;

(c) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, \$5;

(d) filing a statement of change of address or registered office or change of registered agent, or both, \$1;

(e) filing articles of dissolution, \$1;



(f) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;

(g) filing notice of transfer of a reserved corporate name, \$5;

(h) filing statement of election to accept this chapter and issuing certificate of acceptance, \$10;

(i) filing an application of a foreign corporation for a certificate of authority to conduct affairs in the District and issuing a certificate of authority, \$10;

(j) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in the District and issuing an amended certificate of authority, \$5;

(k) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;

(l) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;

(m) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$1;

(n) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$10;

(o) filing any other statement or report, including an annual report, of a domestic or foreign corporation, \$1;

(p) indexing each document filed, except an annual report, \$2;

(q) furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$5;

(r) furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, \$1;

(s) The Commissioners are authorized to make regulations providing for reasonable fees for other services not listed in this section.

(Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 92.)

#### EFFECTIVE DATE

See section 29-1099k.

#### § 29-1093. Commissioners, duties and functions.

(a) The Commissioners shall have the power and authority reasonably necessary to enable them to administer this chapter efficiently and to perform the duties therein imposed upon them.

(b) The Commissioners shall be charged with the administration and enforcement of this chapter. Said Commissioners are authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

(c) The Commissioners may transfer any or all of the functions vested in them by this chapter to any agent designated by them pursuant to law. It shall be the duty of any officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioners pursuant to this chapter.

(d) Every certificate and other document or paper executed by the Commissioners, in pursuance of any authority conferred upon them by this chapter, and sealed with the seal prescribed by subsection (c) of section 29-935, and all copies of such papers, as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by them and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioners are authorized to make, modify, and enforce such regulations as they may deem necessary to carry out the provisions of this chapter, prescribe penalties for the violation of any such regulation not exceeding a fine of \$300 or imprisonment for ninety days, or both, and to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by them as they may deem appropriate. (Aug. 6, 1962, 76 Stat. 301, Pub. L. 87-569, § 93.)

#### REFERENCE IN TEXT

The Classification Act of 1949, as amended, referred to in subsection (b), is set out in Title 5, chapter 21, of the U.S. Code.

#### § 29-1094. Appeal from commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them, give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the United States District Court for the District of Columbia under this section in review of any ruling or decision of the Commissioners may be taken as in other civil actions. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 94.)



## EFFECTIVE DATE

See section 29-1099k.

§ 29-1095. Certificates and certified copies to be received in evidence.

All certificates issued by the Commissioners in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioners under the seal of their office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 95)

## EFFECTIVE DATE

See section 29-1099k.

§ 29-1096. Forms to be furnished by commissioners.

All reports required by this chapter to be filed in the office of the Commissioners shall be made on forms which shall be prescribed and furnished by the Commissioners. Forms for all other documents to be filed in the office of the Commissioners shall be furnished by the Commissioners on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (Aug. 6, 1961, 76 Stat. 302, Pub. L. 87-569, § 96.)

## EFFECTIVE DATE

See section 29-1099k.

§ 29-1097. Greater voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 97.)

§ 29-1098. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 98.)

## EFFECTIVE DATE

See section 29-1099k.

§ 29-1099. Action by members or directors without a meeting.

Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken with-

out a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Commissioners under this chapter. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 99.)

## EFFECTIVE DATE

See section 29-1099k.

§ 29-1099a. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 100.)

§ 29-1099b. Procedure to elect to accept chapter.

Any corporation which is organized and existing under the laws of the District of Columbia or under any special Act of Congress on the date this chapter takes effect, and which is organized not for profit, and is without authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this chapter may elect to avail itself of the provisions of this chapter in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this chapter and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this chapter shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposal to elect to accept this chapter shall be adopted upon receiving at least two thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the election to accept this chapter may be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 101.)

## EFFECTIVE DATE

See section 29-1099k.

§ 29-1099c. Statement of election to accept this chapter.

The statement of election to accept this chapter shall be executed in duplicate by the corporation by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary, or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) a statement by the corporation that it has elected to accept this chapter;

(c) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of the members at which the election to accept this chapter was adopted; that a quorum was present at such meeting, and that such acceptance received the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such election to accept this chapter was adopted by a consent, in writing, signed by all members entitled to vote with respect thereto;

(d) where there are no members or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this chapter was adopted, and the statement of the fact that such acceptance received the vote of a majority of the directors in office;

(e) the purpose or purposes (which may be different from its existing purposes) which it will thereafter pursue, and shall not include any purpose prohibited to a corporation organized under this chapter;

(f) if the corporation has no members, a statement to that effect;

(g) if the corporation has members, there shall be set forth—

(1) the number of classes of members;

(2) if there is more than one class of members, a statement of the qualifications and rights and limitations of each class of members;

(3) if members, or any class or classes of members, are not entitled to vote, a statement to that effect;

(4) if members, or any class or classes of members are entitled to vote, a statement setting forth the voting rights and of any limitation or limitations thereof of members or of any class or classes thereof;

(h) any other provision, not inconsistent with law, or this chapter, for the regulation of the internal affairs of the corporation;

(i) the address, including street and number, if any, of its registered office in the District of Columbia and the name of its registered agent at such address;

(j) the names and respective addresses, including street and number, if any, of its officers and directors;

(k) it shall not be necessary to set forth in the statement of election to accept this chapter any of the corporate purposes enumerated in this chapter. Whenever a provision in the statement of election to accept this chapter is inconsistent with a bylaw, the provision of the statement of election to accept this chapter shall be controlling.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 102.)

#### EFFECTIVE DATE

See section 29-1099k.

§ 29-1099d. Filing of statement of election to accept this chapter.

(a) Duplicate originals of the statement of election to accept this chapter shall be delivered to the Commissioners.

(b) If the Commissioners find that the statement of election to accept this chapter conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of acceptance, to which they shall affix the other duplicate original;

(4) deliver such certificate of acceptance with the other duplicate original affixed thereto to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 103.)

#### EFFECTIVE DATE

See section 29-1099k.

§ 29-1099e. Effect of certificate of acceptance.

(a) Upon the issuance of a certificate of acceptance as hereinbefore provided, the election of the corporation to accept this chapter shall become effective and the existence of the corporation shall be continued under this chapter and such certificate shall be conclusive evidence that all conditions precedent required to be performed under this chapter have been complied with and that the corporation has elected to accept the provisions of this chapter and the corporation shall be entitled to and be possessed of all of the privileges and powers and franchises and be subject to all of the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; but no contract, debt, claim, duty, liability, or obligation of any corporation to which a certificate of acceptance has been issued shall be affected or impaired in any way nor shall the rights of creditors or any liens upon the property of such corporation be affected or impaired by such election to accept this chapter.

(b) Neither the issuance of a certificate of acceptance to a corporation created under the provisions of a special Act of Congress, nor the adoption of any amendment pursuant to this chapter, shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of the special Act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege



granted any such corporation by such special Act except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporation organized under this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 104.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1099f. Actions to be in name of District of Columbia.

All civil actions under this chapter which the Commissioners are authorized to commence, and all prosecutions for violations of the provisions of this chapter or of regulations promulgated under the authority of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioners to perform the functions prescribed for the Corporation Counsel in this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 105.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1099g. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 106.)

## § 29-1099h. Chapter not to affect Internal Revenue Code of 1954.

Nothing in this chapter shall be construed as repealing or affecting any provision of the Internal Revenue Code of 1954. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 107.)

## REFERENCE IN TEXT

The Internal Revenue Code of 1954 is set out in Title 26, U.S. Code.

## § 29-1099i. Effect of invalidity of part of this chapter.

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 108.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1099j. Effect of false statement.

A person who signs any instrument delivered to the Commissioners pursuant to this chapter, knowing it to contain a misstatement of fact, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not exceeding one year, or by both such fine and imprisonment. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 109.)

## EFFECTIVE DATE

See section 29-1099k.

## § 29-1099k. Effective date.

This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 110.)

## § 29-1099l. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, §§ 111.)

## TITLE 30.—DOMESTIC RELATIONS

Chap.	Sec.
3. Uniform Support.....	30-301

### Chapter 1.—MARRIAGE

#### § 30-101. Prohibitions—Marriages void ab initio.

##### NOTES TO DECISIONS

Common-law marriage 1  
Laches and estoppel 6

##### 1. Common-law marriage

Common-law marriage is recognized in District of Columbia. *E. Matthews v. T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*

##### 6. Laches and estoppel

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Court of equity, in determining whether to interpose bar of equitable estoppel in action to annul marriage, must consider all factors of case, parties involved, effect of ultimate decision on third parties not before court, nature of rights sought to be vindicated, and public policy. *Id.*

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife, to deny validity of marriage to second wife. *Id.*

#### § 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

##### NOTES TO DECISIONS

Laches and estoppel 2  
Capable of contracting marriage 6

##### 2. Laches and estoppel

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

##### 6. Capable of contracting marriage

In statute providing that no annulment proceedings can be instituted by person who, being "fully capable of contracting a marriage," has knowingly and willfully contracted any marriage declared illegal by statutes, quoted phrase refers to person with intrinsic legal capacity and does not allude to extrinsic impediments to valid marriage. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

### Chapter 2.—PROPERTY RIGHTS

#### § 30-201. Married women—Power to dispose of separate property—Under 21 years of age.

Subject to provisions of section 18-201a, married women shall hold all their property of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as husbands have the power to dispose of their property, and no more; except that no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8; Sept. 14 1961, 75 Stat. 517, Pub. L. 87-246, § 6.)

##### AMENDMENTS

1961—Act Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 6, amended this section by striking out the words "of subsection (b)". This amendment was made to conform the section to the provisions of § 18-201a, which was amended by the same act eliminating subsection (b).

##### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

##### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

##### CROSS REFERENCE

Dower rights of husband and wife, see § 18-201a.

### Chapter 3.—UNIFORM SUPPORT

[This chapter was chapter 16 of former Title 11 of the Code]

##### Sec.

- 30-301. Purpose—Effective date.
- 30-302. Definitions.
- 30-303. Remedies additional to those now existing.
- 30-304. Extent of duties of support.
- 30-305. Remedies of a State furnishing support or institutional care.
- 30-306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.
- 30-307. Contents of the complaint—Verification.
- 30-308. Representation of plaintiff by Corporation Counsel or private counsel.
- 30-309. Complaint on behalf of a minor—Who may bring.
- 30-310. Duty of court when District of Columbia is initiating State.
- 30-311. Costs and fees—Waiver of payment.
- 30-312. Jurisdiction by arrest.
- 30-313. Information agent—Corporation Counsel designated as.



Sec.

- 30-314. Duty of the court when District of Columbia is responding State.
- 30-315. Order of support—Bond—Contempt.
- 30-316. Copies of orders to be transmitted to initiating State.
- 30-317. Additional duties of the court—Receive and disburse payment.
- 30-318. Testimony of spouse—Competency of.
- 30-319. Application of payments—Crediting on account of other support orders.
- 30-320. Support of illegitimate children.
- 30-321. Effect of participation in proceeding.
- 30-322. Appeals.
- 30-323. Separability of provisions.
- 30-324. Appropriations authorized.

### § 30-301. Purpose—Effective date.

The following provisions to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law in respect thereto, shall be in effect in the District of Columbia on and after the effective date of this chapter. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 1.)

#### EFFECTIVE DATE

Section 26 of act July 10, 1957, provided that: "This Act [adding this chapter] shall take effect sixty days after appropriations therefor become available."

#### EFFECT OF REORGANIZATION PLAN No. 5

Section 25 of act July 10, 1957, provided that: "Where any provision of this Act [this chapter] refers to an office or agency abolished under the provisions of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824) [set out in Appendix to Title 1, Administration], such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act [this chapter] shall be construed as a limitation on the authority vested in the Commissioners by such Reorganization Plan."

### § 30-302. Definitions.

As used in this chapter, unless the context requires otherwise—

(a) "State" includes any State, Territory, or possession of the United States and the Commonwealth of Puerto Rico and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating State" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "Responding State" means any State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "Court" means the Domestic Relations Branch of the Municipal Court for the District of Columbia and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(e) "Duty of support" includes: (1) any duty of support imposed by statute or by common law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; (2) any duty of reimbursement imposed by law for moneys expended by a State or a political subdivision or an agency thereof for support, including institutional care; and (3) the duty imposed by section 11-1620.

(f) "Dependent" means any person who is in need of and entitled to support from a person legally liable for such support.

(g) "Plaintiff" means any person or any State or political subdivision or agency thereof, commencing a proceeding pursuant to this or a similar reciprocal law, whether on his or its own behalf, or on behalf of a dependent as herein defined.

(h) "Defendant" means any person owing a duty of support, against whom a proceeding is commenced pursuant to this chapter or a similar reciprocal Act. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 2.)

#### NOTES TO DECISIONS

Counsel fees 1  
Desertion by mother 2  
Jurisdiction 3  
Law governing 4

##### 1. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

##### 2. Desertion by mother

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

##### 3. Jurisdiction

When wife's reciprocal enforcement of support proceeding was commenced in New York, that court had primary duty under statute to decide if wife had made prima facie showing of need for support for children and that they were entitled to support from nonresident father. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Valid, existing New York decree which on divorce of parties imposed obligation on father to support children whose custody was awarded to mother made prima facie case in another New York court in reciprocal enforcement of support proceeding against father who was served with process in District of Columbia. *Id.*

An action by mother under Uniform Reciprocal Enforcement of Support Act against father for support of their minor children was properly dismissed where there was an outstanding order in United States District Court for support of the children in an action previously brought by the mother against the father, which court retained jurisdiction for modification in event of change of circumstances, so that there was nothing for Domestic Relations Branch of Court of General Sessions to act upon. *N. E. Y. Jackson v. F. E. Jackson* (D.C. App. 1963, 187 A. 2d 704).

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

##### 4. Law governing

When mother's petition in reciprocal enforcement of support proceeding was forwarded to District of Columbia, latter court had to determine under local statute whether father owed duty of support and, if so, amount he should be required to pay. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law



of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia, this chapter on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

### § 30-303. Remedies additional to those now existing.

The civil remedies herein provided are in addition to and not in substitution for any other remedies. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 3.)

#### NOTES TO DECISIONS

##### 1. Decree, does not bar action for support

Award for separate maintenance and support for minor children obtained under Reciprocal Enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozzi v. J. Figliozzi* (D.C. Mun. App. 1961, 173 A. 2d 904).

### § 30-304. Extent of duties of support.

Duties of support enforceable under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The defendant shall be presumed to have been present in the responding State during the period for which support is sought until otherwise shown. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 4.)

#### NOTES TO DECISIONS

Controlling law 1  
Jurisdiction 2  
Law governing 3  
Liability when mother deserts 4  
Obligor-obligee relationship 5  
Support, duties of 6

##### 1. Controlling law

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

##### 2. Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

##### 3. Law governing

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

##### 4. Liability when mother deserts

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

##### 5. Obligor-obligee relationship

In proceedings brought by child in District of Columbia, against her father, who was in Florida, under Uniform Reciprocal Enforcement of Support Act, this chapter, where mother in District of Columbia had custody, but due to mother's illness decree was entered by Florida court changing custody to father and abating father's support payments, and later child, with father's consent, returned to live with mother, the child showed an obligor-obligee relationship sufficient to establish, under law of District of Columbia, a prima facie case for support. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

##### 6. Support, duties of

That mother and her second husband allegedly turned her sons against their father did not relieve father of duty of supporting sons where sons had not been adopted by second husband. *D. Prager v. J. Smith, etc.* (D.C. App. 1963, 195 A. 2d 257).

Natural father's duty to support his minor children is not simply moral obligation but a duty imposed by law and is not relieved by personal disputes, real or fanciful, between contesting parents. *Id.*

### § 30-305. Remedies of a State furnishing support or institutional care.

Whenever any State or a political subdivision or agency thereof has furnished, or is furnishing support or institutional care to a dependent, it shall for the purposes of securing reimbursement of past expenditures and of obtaining continuing support, have the same right to invoke the provisions of this chapter as the dependent to whom such support or care was furnished, or is being furnished. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 5.)

### § 30-306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.

Proceedings to enforce duties of support initiated in the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter shall be vested in the domestic relations branch of the municipal court for the District of Columbia, which branch in exercising the jurisdiction vested in the court by this chapter, shall have all of the power and authority which is vested in the court by sections 11-752, 11-758 to 11-770, 16-210, 16-220, 16-416 and 32-786. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 6.)

#### NOTES TO DECISIONS

Counsel fees 1  
Jurisdiction 2  
Right to support 3

##### 1. Counsel fees

Father's deliberate and unjustified failure to comply with New York order for child support, which forced legal custodian to file suit for their protection, warranted award of counsel fees to custodian's court-assigned attorney in reciprocal support case. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

##### 2. Jurisdiction

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of



the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

### 3. Right to support

Husband had duty to support wife after they had separated, in absence of proof that separation was due to her misconduct. *W. Novak v. G. J. Novak* (D.C. App. 1963, 190 A. 2d 266).

Wife may be entitled to award of support payments from husband from whom she has separated even if separation was due to wife's misconduct, but amount awarded will be less than would otherwise be the case. *Id.*

Fact that wife who was separated from husband had no income of her own but was depending entirely on her parents for food and shelter established her need for support, and need was not altered, except perhaps as to extent thereof, by fact that she had a potential earning capacity. *Id.*

Full inquiry into financial status of both parties should be made in action by wife for support after separation from her husband, and husband should be required to make full, detailed and accurate disclosure of his assets and income. *Id.*

### § 30-307. Contents of the complaint—Verification.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and of the dependents for whom the duty of support is sought to be enforced, and all other pertinent facts necessary to enable the court to determine whether a duty of support exists on the part of the defendant. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 7.)

### § 30-308. Representation of plaintiff by Corporation Counsel or private counsel.

In any instance in which the Corporation Counsel of the District of Columbia is satisfied that a public support burden has been incurred or is threatened, it shall be his duty to represent the plaintiff in any proceedings arising under this chapter or a similar reciprocal Act. In all other cases the court may, in its discretion, appoint private counsel to represent the plaintiff: *Provided*, That the plaintiff may be represented by private counsel in any proceedings under this chapter at his own expense. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 8.)

#### NOTES TO DECISIONS

##### 1. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

### § 30-309. Complaint on behalf of a minor—Who may bring.

A complaint on behalf of a minor dependent may be brought by any person or agency as next friend

of the minor, regardless of whether such person or agency has been appointed guardian of such minor. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 9.)

#### NOTES TO DECISIONS

Jurisdiction 1  
Law governing 2  
Prior decree 3

##### 1. Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

##### 2. Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

##### 3. Prior decree

A person may institute proceedings for a minor for support under Uniform Reciprocal Enforcement of Support Act, this chapter, regardless of fact that a decree, granting custody to another, is outstanding. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

### § 30-310. Duty of court when District of Columbia is initiating State.

If the court finds that a complaint initiated in the District of Columbia sets forth facts from which it appears that the defendant owes a duty of support, as defined in this chapter, and that a court of a responding State may obtain jurisdiction of the defendant, it shall so certify and shall cause to be transmitted to the court in the responding State, three copies of its certificate, three certified copies of the complaint, and three copies of this chapter. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 10.)

#### NOTES TO DECISIONS

##### 1. Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

### § 30-311. Costs and fees—Waiver of payment.

The complaint, when initiated in the District of Columbia, shall be accompanied by such fees and costs as may be required by the court as well as by the court of the responding State: *Provided*, That the court whether the District of Columbia be the initiating or responding State, may in its discretion direct that payment or prepayment of any part or all fees and costs incurred in the District of Columbia be waived upon the filing of an affidavit representing that the plaintiff is unable to pay the same: *Provided*



further, That the court shall direct waiver of payment or prepayment of such fees and costs whenever the plaintiff is a State having a similar provision for waiver of fees, or a political subdivision or agency thereof. Nothing in this section shall be construed to deprive the court of its discretion to assess costs and fees. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 11.)

#### § 30-312. Jurisdiction by arrest.

When the court has reason to believe that the defendant may flee the jurisdiction of the responding State, it may (a) as the court of the initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State, or (b) as the court of a responding State, obtain the body of the defendant by any appropriate process. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 12.)

#### § 30-313. Information agent—Corporation Counsel designated as.

The Corporation Counsel of the District of Columbia is hereby designated as the reciprocal information agent under this chapter and it shall be his duty to transmit a copy of this chapter and any subsequent changes therein to the State information agency of every other State which has adopted this or a substantially similar Act, and to maintain a registry of the names and addresses of the courts having jurisdiction of such proceedings in other States. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 13.)

#### § 30-314. Duty of the court when the District of Columbia is responding State.

(a) When the court receives from the court of an initiating State certified copies of a complainant or other proceedings containing the essential allegations of a complaint, under whatever name it may be known, and a certificate similar to that required by section 11-1610, it shall docket the cause and refer the matter to the Corporation Counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of the defendant in order to carry out the provisions of this chapter.

(b) If the court is unable to obtain jurisdiction of the defendant due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall hold the case pending receipt of more accurate information or an amended complaint from the court in the initiating State. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 14.)

#### NOTES TO DECISIONS

##### 1. Conflict of laws

Where District of Columbia Reciprocal Enforcement of Support Act had no section providing that, where District was receiving jurisdiction, and respondent controverted petition, judge should stay hearing and transmit to initiating state a transcript of clerk's minutes showing denials entered by respondent, trial judge correctly refused to apply such section of initiating state to proceedings in District. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

#### § 30-315. Order of support—Bond—Contempt.

If the court finds a duty of support as defined by this chapter it may order the defendant to pay such amounts under such terms and conditions as the court may deem proper. The court may require the defendant to furnish recognizance in the form of a cash deposit or bond, and may punish a defendant who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding cognizable by the court. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 15.)

#### NOTES TO DECISIONS

##### 1. Abuse of discretion

Award of \$60 every two weeks for maintenance and support of wife and children, under Uniform Reciprocal Enforcement of Support Act, was not abuse of discretion, although award would disable husband from meeting obligations to his common law children with whom he lived. *E. Miner v. M. Miner* (D.C. App. 1963, 192 A. 2d 811).

On record presented, order requiring father to make monthly payments for support of child who was living in Florida in custody of father's former wife was proper, and the amount within discretionary limits. *M. Brickley v. L. Weinstein* (D.C. Mun. App. 1961, 173 A. 2d 372).

In a proceeding under the Reciprocal Enforcement of Support Act, this chapter, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. *Menetrez v. Menetrez* (D.C. Mun. App. 1959, 147 A. 2d 772).

##### 2. Preference of legitimate children

As between claims of legitimate and illegitimate children, children who are the result of a marital relationship are entitled to support from their father before and in preference to those born through an illicit association. *C. J. Jefferson v. D. J. Jefferson* (D.C. App. 1963, 192 A. 2d 813).

Trial judge, in making an award for support of wife and six minor children properly refused to consider as part of the valid expenditures of husband monthly payments he was required to make for support of five illegitimate children. *Id.*

#### § 30-316. Copies of orders to be transmitted to initiating State.

The court shall cause to be transmitted to the court of the initiating State a certified copy of all orders of support or for reimbursement therefor entered by it. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 16.)

#### § 30-317. Additional duties of the court—Receive and disburse payments.

The court shall have the additional duty, which may be carried out by the clerk of the court, to receive payments made pursuant to order of the court by defendants within the District of Columbia or transmitted by the court of a responding State, and to disburse the same in accordance with the order of the court, and upon request of the court of an initiating State shall furnish to that court a certified statement of all payments received and disbursed in a particular case. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 17.)

#### § 30-318. Testimony of spouse—Competency of.

In all proceedings arising under this chapter, husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 18.)



**§ 30-319. Application of payments—Crediting on account of other support orders.**

No order for support entered by the court in any proceeding arising under this chapter shall supersede any previous order of support entered in a divorce or separate maintenance action, or any other proceedings, but the amounts for a particular period paid pursuant to either order, when verified, shall be credited against amounts accruing or accrued for the same period under both. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 19.)

**§ 30-320. Support of illegitimate children.**

The natural father of an illegitimate child shall have the duty to support such child until the age of sixteen years (a) when paternity has been established by judicial process, or (b) when paternity has been directly acknowledged by the putative father under oath. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 20.)

**§ 30-321. Effect of participation in proceeding.**

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 21.)

**§ 30-322. Appeals.**

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the civil branch of the municipal court for the District of Columbia. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 22.)

**CROSS REFERENCE**

Right of appeal to District of Columbia Court of Appeals for the District of Columbia, see § 11-741.

**§ 30-323. Separability of provisions.**

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 23.)

**§ 30-324. Appropriations authorized.**

Appropriations for expenses necessary for carrying out the purposes of this chapter, including additional personal services for the court and for the Office of the Corporation Counsel, are hereby authorized. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 24.)

## TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

### Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

#### § 31-631. Double salaries—School teachers and employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), providing that unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocation schools; nor to employees of the school garden department of the public schools of the District of Columbia; nor to employees of the community center department of the public schools of the District of Columbia. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1.)

#### CODIFICATION

This section is set out in this supplement for the purpose of omitting a provision contained in the section as set out in the main volume of the Code. The omitted language which was limited by the provisions of act July 8, 1918, 40 Stat 823, to the period from July 15 to September 15, 1918, is as follows: "teachers of the public schools of the District of Columbia when employed by any of the executive departments or independent establishments of the United States Government; nor to".

### Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

#### SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

Sec.

31-725b. Annuity increases granted by act Oct. 24, 1962—Effective date.

31-739a. Price index—Definition.

31-739b. Adjustment of annuities on basis of price index—Computation.

#### SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

#### § 31-725. Computation of annuity—Options.

\* \* \* \* \*

(b) Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to his or her surviving widow or widower designated by such teacher at time of retirement equal to 55 per centum of such life annuity. The life annuity of the teacher making such election, excluding any increase because of retirement under section 31-724, shall be reduced by 2½ per centum of so much thereof as does not exceed \$3,600 and by 10 per centum of so much

thereof as exceeds \$3,600. The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or widower's attainment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage.

\* \* \* \* \*

(As amended Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(a).)

#### AMENDMENTS

1962—Section 203(a) of act Oct. 24, 1962, amended subsection (b) (7) by changing "50 per centum" to "55 per centum" and by changing \$2,400 to \$3,600.

#### LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

Section 205 of act Oct. 24, 1962, provides in part as follows: "The amendments made by section 203 [amendments to sections 31-725 and 31-729] shall not apply in the case of employees retired or otherwise separated prior to the date of enactment of this Act [Oct. 24, 1962], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if these amendments had not been enacted."

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31-721 to 31-739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31-725b, 31-739a and 31-739b, amending §§ 31-725 and 31-729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

#### § 31-725b. Annuity increases granted by act Oct. 24, 1962—Effective date.

(a) The annuity of each person who, on the effective date, is receiving or entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund shall be increased by 5 per centum of the amount of such annuity.

(b) The annuity of each person who receives or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund commencing during the period which begins on the day following the effective date of this section and ends five years after such date, shall be increased in accordance with the following table:

If the annuity commences between—	The annuity shall be increased by—
January 2, 1963, and December 31, 1963-----	4 per centum.
January 1, 1964, and December 31, 1964-----	3 per centum.
January 1, 1965, and December 31, 1965-----	2 per centum.
January 1, 1966, and December 31, 1966-----	1 per centum.

(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee who received an increase under this section



shall be increased by a percentage equal to the percentage by which the annuity of such employee was so increased.

(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The limitation contained in the next to the last sentence of section 31-725(c)(1), shall not be effective on and after the effective date of this section.

(f) The increases provided by this section shall take effect on the effective date of this section, except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

(g) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. (Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title II, § 201.)

#### EFFECTIVE DATE

Section 205 of act Oct. 24, 1962, provided that this section "shall take effect on January 1, 1963."

#### LIMITATIONS REFERRED TO IN SUBSECTION (e)

The limitations are contained in section 31-725, subsection (c)(1) and reads as follows: "Such increase in annuity shall not exceed the sum necessary to increase such annuity exclusive of annuity purchased by voluntary contributions under this section, to \$4,104."

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31-721 to 31-739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31-725b, 31-739a and 31-739b, amending §§ 31-725 and 31-729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

§ 31-729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Determination of dependency and disability.

\* \* \* \* \*

(b)(1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia and is survived by a widow, or dependent widower, such widow or dependent widower shall be paid an annuity beginning the first day of the month following the death of the teacher, equal to 55 per centum of the amount of an annuity computed as provided in section 31-725(a) with respect to such teacher: *Provided*, That such payments or any right thereto shall cease upon the death or remarriage of the widow, or dependent widower, or upon the widower's becoming capable of self-support.

(2) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired subsequent to March 6, 1952 under section 31-723 or section 31-724, and is survived by a widow or dependent widower and a child or children, such widow or dependent widower shall be paid an immediate annuity terminable upon death, remarriage, or attainment of age fifty. The annuity payable to the widow or dependent widower of such teacher shall be equal to 55 per centum of

the amount of an annuity computed as provided in section 31-725(a) with respect to such teacher. The annuity payable to the widow or dependent widower of such annuitant shall be equal to 55 per centum of the amount of the annuity, which such annuitant was receiving at the time of his death, excluding any portion thereof purchased by voluntary contributions under section 31-721, or, if such annuitant had elected a reduced annuity under the provisions of section 31-725(b), 55 per centum of the annuity which such annuitant would have received if he had not made such election.

(3) If any teacher to whom this subchapter applies shall die after completing five years of service in the public schools of the District of Columbia or after having retired under the provisions of section 31-723 or sections 31-724 and is survived by a wife or husband, each surviving child who received more than one-half of his support from the teacher shall be paid an annuity equal to the smallest of (a) 40 per centum of the teacher's average salary divided by the number of children, (b) \$600, or (c) \$1,800 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 50 per centum of the teacher's average salary divided by the number of children, (b) \$720, or (c) \$2,160 divided by the number of children. The child's annuity shall commence on the day after the employee dies, and such annuity granted under this Act or any right thereto shall terminate on the last day of the month before (1) his attaining age eighteen unless incapable of self-support, (2) his becoming capable of self-support after age eighteen, (3) his marriage, or (4) his death, except that the annuity of a child who is a student as described in subsection (c)(2) shall terminate on the last day of the month before (A) his marriage, (B) his death, (C) his ceasing to be such a student, or (D) his attaining age twenty-one. Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

\* \* \* \* \*

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means an unmarried child, including a dependent stepchild or an adopted child, under the age of eighteen years, or such unmarried child who because of physical or mental disability is incapable of self-support, or such unmarried child between eighteen and twenty-one years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child whose twenty-first birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly



pursuing such a course of study or training, shall be deemed for the purposes of this paragraph and subsection (b) (3) to have attained the age of twenty-one on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed four months and if he shows to the satisfaction of the Commissioners that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

\* \* \* \* \*

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203 (b), (c), (d), (e).)

#### AMENDMENTS

Section 203(b) of act Oct. 24, 1962, struck out "one-half" and inserted in lieu thereof "55 per centum of" in subsection (b) (1).

Section 203(c) struck out "one-half" in three places and inserted "55 per centum of" in two places and "55 per centum" in the third place in subsection (b) (2).

Section 203(d) (1) amended the third sentence of subsection (b) (3) to read as above set out.

Section 203(d) (2) enacted the provision set out as note entitled, "Teachers' Retirement and Annuity Fund".

Section 203(e) amended subsection (c) (2) by changing the period at the end of sentence to a comma and adding the matter beginning with the words "or such unmarried child".

#### LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

Section 205 of act Oct. 24, 1962, provides in part as follows: "The amendments made by section 203 [amendments to sections 31-725 and 31-729] shall not apply in the case of employees retired or otherwise separated prior to the date of enactment of this Act [Oct. 24, 1962], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if these amendments had not been enacted."

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 37-721 to 31-739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31-725b, 31-739a and 31-739b, amending §§ 31-725 and 31-729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

#### TEACHERS' RETIREMENT AND ANNUITY FUND

Section 203(d) (2) of act Oct. 24, 1962, referring to the provisions of the amendments made to the third sentence of subparagraph (b) (3) above set out provides as follows: "Notwithstanding any other provision of law, the benefits resulting from enactment of this amendment shall be paid from the teachers' retirement and annuity fund."

#### CROSS REFERENCE

For provisions computing increases for childrens and deceased annuitants see section 31-739b(b) (3).

#### § 31-739a. Price index—Definition.

Whenever used in sections 31-721 to 31-739b the term "price index" shall mean the annual average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. (Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, title II, § 202.)

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provisions of law, the benefits made payable under sections 31-721 to 31-739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31-725b, 31-739a, and 31-739b, amending §§ 31-725 and 31-729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

#### § 31-739b. Adjustment of annuities on basis of price index—Computation.

(a) After January 1, 1964, and after each succeeding January 1, the Commissioners of the District of Columbia shall determine the per centum change in the price index from the later of 1962 or the year preceding the most recent cost-of-living adjustment to the latest complete year. On the basis of such Commissioners' determination, the following adjustments shall be made:

(1) Effective April 1, 1964, if the change in the price index from 1962 to 1963 shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2, 1963, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

(2) Effective April 1 of any year other than 1964 after the price change shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

(b) Eligibility of an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) Effective from the date of the first increase under this section, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31-729(b) (3), which annuity commenced the day after the annuitant's death, shall be increased as provided in subsection (a) (1) or (a) (2) if the commencing date of annuity to the annuitant was earlier than January 2 of the year preceding the first increase.

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31-729(b) (3)), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

(3) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 31-729(b) (3), the items \$600, \$720, \$1,800, and \$2,160 appearing in section 31-729(b) (3) shall be increased by the total per centum increase allowed and in force under this section, and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 31-729(b) (3) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death. Effective from





Salary class and position	Service step 1 (mini- mum)	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9
Class 8—Continued									
Director, health, physical education, athletics and safety.									
Executive assistant to deputy superintendent.									
Principal, elementary school.									
Principal, junior high school.									
Principal, senior high school.									
Principal, vocational high school.									
Principal, Americanization School.									
Principal, boys' junior-senior high school.									
Principal, Capitol Page School.									
Principal, health school.									
Principal, laboratory school.									
Principal, veterans high school.									
Class 7:									
Group B, master's degree.....	\$10,350	\$10,600	\$10,850	\$11,100	\$11,350	\$11,600	\$11,850	\$12,100	\$12,350
Group C, master's degree plus 30 credit hours.....	10,550	10,800	11,050	11,300	11,550	11,800	12,050	12,300	12,550
Director, elementary education (administration).									
Director in elementary education.									
Director, special education.									
Class 8:									
Group B, master's degree.....	9,850	10,100	10,350	10,600	10,850	11,100	11,350	11,600	11,850
Group C, master's degree plus 30 credit hours.....	10,050	10,300	10,550	10,800	11,050	11,300	11,550	11,800	12,050
Assistant principal, elementary school.									
Assistant principal, junior high school.									
Assistant principal, senior high school.									
Assistant principal, vocational high school.									
Assistant principal, Americanization School.									
Assistant principal, health school.									
Dean of students, teachers college.									
Director, school attendance.									
Professor, teachers college.									
Registrar, teachers college.									
Supervising director, adult education and summer school.									
Supervising director, athletics.									
Supervising director, curriculum.									
Supervising director, elementary education (supervision and instruction).									
Supervising director, reading clinic.									
Supervising director, subject field.									
Class 9:									
Group A, bachelor's degree.....	8,940	9,190	9,440	9,690	9,940	10,190	10,440	10,690	10,940
Group B, master's degree.....	9,440	9,690	9,940	10,190	10,440	10,690	10,940	11,190	11,440
Group C, master's degree plus 30 credit hours.....	9,640	9,890	10,140	10,390	10,640	10,890	11,140	11,390	11,640
Assistant director, food services.									
Supervising director, audiovisual instruction.									
Class 10:									
Group B, master's degree.....	9,030	9,280	9,530	9,780	10,030	10,280	10,530	10,780	11,030
Group C, master's degree plus 30 credit hours.....	9,230	9,480	9,730	9,980	10,230	10,480	10,730	10,980	11,230
Assistant director, adult education and summer schools.									
Statistician.									
Class 11:									
Group B, master's degree.....	8,620	8,870	9,120	9,370	9,620	9,870	10,120	10,370	10,620
Group C, master's degree plus 30 credit hours.....	8,820	9,070	9,320	9,570	9,820	10,070	10,320	10,570	10,820
Assistant director, audiovisual.									
Assistant director, practical nursing.									
Assistant director, subject field.									
Associate professor, teachers college.									
Chief librarian, teachers college.									
Supervisor, elementary education.									
Class 12:									
Group B, master's degree.....	8,210	8,460	8,710	8,960	9,210	9,460	9,710	9,960	10,210
Group C, master's degree plus 30 credit hours.....	8,410	8,660	8,910	9,160	9,410	9,660	9,910	10,160	10,410
Chief attendance officer.									
Clinical psychologist.									
Class 13:									
Group B, master's degree.....	7,395	7,710	8,025	8,340	8,655	8,970	9,285	9,600	9,915
Group C, master's degree plus 30 credit hours.....	7,595	7,910	8,225	8,540	8,855	9,170	9,485	9,800	10,115
Assistant professor, teachers college.									
Psychiatric social worker.									
Assistant professor, laboratory school.									

Salary class and position	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7
Class 14:							
Group A, bachelor's degree.....	\$6,030	\$6,285	\$6,540	\$6,795	\$7,050	\$7,305	\$7,560
Group B, master's degree.....	6,530	6,785	7,040	7,295	7,550	7,805	8,060
Group C, master's degree plus 30 credit hours.....	6,730	6,985	7,240	7,495	7,750	8,005	8,260

Salary class and position	Service step 8	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13
Class 14:						
Group A, bachelor's degree.....	\$7,815	\$8,070	\$8,325	\$8,580	\$8,835	\$9,090
Group B, master's degree.....	8,315	8,570	8,825	9,080	9,335	9,590
Group C, master's degree plus 30 credit hours.....	8,515	8,770	9,025	9,280	9,535	9,790



Salary class and position	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8
Class 15:								
Group A, bachelor's degree.....	\$5,000	\$5,260	\$5,520	\$5,735	\$5,950	\$6,165	\$6,380	\$6,595
Group B, master's degree.....	5,500	5,760	6,020	6,235	6,450	6,665	6,880	7,095
Group C, master's degree plus 30 credit hours.....	5,700	5,960	6,220	6,435	6,650	6,865	7,080	7,295
Attendance officer.								
Census supervisor.								
School psychologist.								
Counselor, elementary and secondary schools.								
Instructor, teachers college.								
Instructor, laboratory school.								
Child labor inspector.								
Counselor, placement.								
Librarian, elementary and secondary schools.								
Librarian, teachers college.								
Research assistant.								
School social worker.								
Speech correctionist.								
Coordinator of practical nursing.								
Teacher, elementary and secondary schools.								

Salary class and position	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13	Longev- ity step X	Longev- ity step Y
Class 15:							
Group A, bachelor's degree.....	\$6,810	\$7,025	\$7,240	\$7,455	\$7,670	\$8,190	\$8,710
Group B, master's degree.....	7,310	7,525	7,740	7,955	8,170	8,690	9,210
Group C, master's degree plus 30 credit hours.....	7,510	7,725	7,940	8,155	8,370	8,890	9,410
Attendance officer.							
Census supervisor.							
School psychologist.							
Counselor, elementary and secondary schools.							
Instructor, teachers college.							
Instructor, laboratory school.							
Child labor inspector.							
Counselor, placement.							
Librarian, elementary and secondary schools.							
Librarian, teachers college.							
Research assistant.							
School social worker.							
Speech correctionist.							
Coordinator of practical nursing.							
Teacher, elementary and secondary schools.							

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85-838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 87-773, § 1; Oct. 24, 1962, 76 Stat. 1229, Pub. L. 87-881, title I, § 101(1).)

AMENDMENTS

1962—Section 101(1) of act Oct. 24, 1962, amended the section by substituting new schedules as above set out.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

NOTES TO DECISIONS

1. Promotion of teachers without master's degrees

Teachers' Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master's degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor's degrees. *R. B. Thompson, Jr. v. Board of Education etc.* (1962, 299 F. 2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers' Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master's degree, was applicable to new appointees only, and did not disturb status of teachers without master's degrees who had been placed on same salary basis as those with master's degrees by prior amendment. *Id.*

§ 31-1502. Repealed. Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, Title I, § 102.

Section of act Sept. 13, 1960, 74 Stat. 913, Pub. L. 86-773, § 2 granted a salary increase of 7.5 per centum. Effective date of repeal is January 1, 1963.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1962, or to which they may be transferred and assigned under the provisions of section 31-1521 and section 31-1522. No teacher, school officer, or other employee shall be appointed or promoted to any position in section 31-1501 on probationary or permanent status unless he possesses a master's degree, except that a person possessing a bachelor's degree may be appointed on probationary or permanent status as Director of Food Services, Assistant Director of Food Services,

Supervising Director of Military Science and Tactics, teacher of military science and tactics, teacher of driver training, shop teacher in the vocational education program, teacher in the junior high school, teacher in the elementary schools, research assistant, attendance officer, child labor inspector, or census supervisor, and a person not possessing a bachelor's degree may be appointed on probationary or permanent status as shop teacher in the vocational education program if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1962, and except that a person not possessing a master's degree who was appointed on probationary or permanent status before January 1, 1963, to a position as a nonshop teacher in a vocational education program, or counselor in the vocational high schools, or counselor in the junior high schools may continue to be employed in such a position, and except that a person not possessing a master's degree who was on the list of eligible candidates for any such position before January 1, 1963, may continue to be eligible for such position until the expiration of such eligible list. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1962. (Aug. 5, 1955, 69 Stat. 523, ch. 569, title II, § 2; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1231, Pub. L. 87-881, title I, § 101(2).)

AMENDMENTS

1962—Section 101(2) of act Oct. 24, 1962, made the following amendments to the section: In subsection (a) third sentence, struck out "December 31, 1957" and inserted "December 31, 1962". In the fourth sentence struck out the words "counselor in the vocational high schools, counselor in the junior high schools" and the words, "school social worker," and at the end of the sentence by inserting before the period, and following the word "Board" the matter beginning with "and except" and continuing to end of that sentence. In the fifth sentence it struck out "December 31, 1957" and inserted "December 31, 1962".

Section 101(3) of the same act amended subsection (b) by striking the figure "18" wherever same appeared in subsection (b) and changed to "15".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending section 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

NOTES TO DECISIONS

1. Promotion of teachers without master's degrees

Teachers' Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master's degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor's degrees. *R. B. Thompson, Jr. v. Board of Education etc.* (1962, 299 F. 2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers' Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master's degree, was applicable to new appointees only, and did not disturb status of teachers without master's degrees who had been placed on same salary basis as those with master's degrees by prior amendment. *Id.*

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-1521. Rules for assignment to salary classes—Comparative tables.

Each teacher, school officer, or other employee in the service of the Board on January 1, 1963, who occupies a position held by him on December 31, 1962, under the provisions of this chapter, shall be placed in a salary class covered by section 35-1501 as indicated at the end of this section. Any employee in group A, B, or C of his salary class on December 31, 1962, shall be assigned to the same letter group of the salary class to which he is transferred on January 1, 1963.

TITLE AND CLASS OF POSITION ON DECEMBER 31, 1962		TITLE AND CLASS OF POSITION ON JANUARY 1, 1963	
Title	Class	Title	Class
Superintendent -----	1	Superintendent -----	1
Deputy superintendent -----	2	Deputy superintendent -----	2
Assistant superintendent -----	3	Assistant superintendent -----	3
Assistant superintendent in charge of business affairs -----	3	Assistant superintendent in charge of business affairs -----	3
President, District of Columbia Teachers College -----	3	President, District of Columbia Teachers College -----	3
Dean, District of Columbia Teachers College -----	4	Dean, District of Columbia Teachers College -----	4
Chief examiner -----	5	Chief examiner -----	5
Dean of students, teachers college -----	5	Dean of students, District of Columbia Teachers College -----	8
Executive assistant to the superintendent -----	5	Executive assistant to the superintendent -----	5
Psychiatrist -----	5	Psychiatrist -----	5
Director, food services -----	5	Director, food services -----	5
Executive assistant to the deputy superintendent -----	6	Executive assistant to the deputy superintendent -----	6
Assistant to the assistant superintendent (elementary schools) -----	6	Assistant to the assistant superintendent (elementary schools) -----	6
Director, curriculum -----	4	Director, curriculum -----	4
Director, elementary education (administration) -----	7	Director, elementary education (administration) -----	7
Director, elementary education (supervision and instruction) -----	6	Director, elementary education (supervision and instruction) -----	6
Director in elementary education -----	7	Director in elementary education -----	7
Director, health, physical education, athletics and safety -----	6	Director, health, physical education, athletics and safety -----	6
Director, industrial and adult education -----	5	Director, industrial and adult education -----	5
Director, special education -----	7	Director, special education -----	7
Principal, senior high school -----	6	Principal, senior high school -----	6
Principal, vocational high school -----	6	Principal, vocational high school -----	6
Principal, junior high school -----	7	Principal, boys' junior high school -----	6
Registrar, teachers college -----	7	Registrar, District of Columbia Teachers College -----	8
Principal, Americanization School -----	7	Principal, Americanization School -----	6
Principal, junior high school -----	7	Principal, junior high school -----	6
Professor, District of Columbia Teachers College -----	8	Professor, District of Columbia Teachers College -----	8
Supervising director, adult education and summer schools -----	8	Supervising director, adult education and summer schools -----	8
Supervising director, athletics -----	8	Supervising director, athletics -----	8
Supervising director, curriculum -----	8	Supervising director, curriculum -----	8
Supervising director, elementary education (supervision and instruction) -----	8	Supervising director, elementary education (supervision and instruction) -----	8



TITLE AND CLASS OF POSITION  
ON DECEMBER 31, 1962

Title	Class
Assistant to the assistant superintendent (general research, budget and legislation)-----	8
Assistant to the assistant superintendent (junior and senior high schools)-----	7
Assistant to the assistant superintendent (pupil appraisal, study and attendance)-----	8
Supervising director, reading clinic-----	8
Supervising director, subject field-----	8
Director, school attendance-----	8
Supervising director, audio-visual instruction-----	9
Principal, elementary school-----	8
Principal, Capitol Page School-----	8
Principal, health school-----	7
Principal, laboratory school-----	7
Assistant principal, senior high school-----	8
Assistant principal, vocational high school-----	8
Assistant director, food services-----	9
Assistant principal, junior high school-----	9
Assistant principal, Americanization School-----	9
Associate professor, District of Columbia Teachers College-----	13
Assistant principal, elementary school-----	11
Assistant principal, health school-----	14
Assistant director, audio-visual instruction-----	13
Assistant director, evening and summer schools-----	11
Principal, veterans high school-----	8
Assistant director, practical nursing-----	13
Assistant director, subject field-----	13
Statistician-----	11
Assistant professor, District of Columbia Teachers College-----	16
Assistant professor, laboratory school-----	16
Chief attendance officer-----	15
Chief librarian, District of Columbia Teachers College-----	13
Clinical psychologist-----	15
Supervisor, elementary education-----	13
Psychiatric social worker-----	16
Attendance officer-----	18
Census supervisor-----	18
Child labor inspector-----	18
Coordinator, practical nursing-----	18
Counselor, elementary and secondary schools-----	18
Counselor, placement-----	18
Instructor, District of Columbia Teachers College-----	18
Instructor, laboratory schools-----	18
Librarian, elementary and secondary schools-----	18
Librarian-----	18
Research assistant-----	18
School psychologist-----	18
School social worker-----	18
Speech correctionist, District of Columbia Teachers College-----	18
Teacher, elementary and secondary schools-----	18

TITLE AND CLASS OF POSITION  
ON JANUARY 1, 1963

Title	Class
Assistant to the assistant superintendent (general research, budget, and legislation)-----	6
Assistant to the assistant superintendent (junior and senior high schools)-----	6
Assistant to the assistant superintendent (pupil appraisal, study and attendance)-----	6
Supervising director, reading clinic-----	8
Supervising director, subject field-----	8
Director, school attendance-----	8
Supervising director, audio-visual instruction-----	9
Principal, elementary school-----	6
Principal, Capitol Page School-----	8
Principal, health school-----	6
Principal, laboratory school-----	6
Assistant principal, senior high school-----	8
Assistant principal, vocational high school-----	8
Assistant director, food services-----	9
Assistant principal, junior high school-----	8
Assistant principal, Americanization School-----	8
Associate professor, District of Columbia Teachers College-----	11
Assistant principal, elementary school-----	8
Assistant principal, health school-----	8
Assistant director, audio-visual instruction-----	11
Assistant director, evening and summer schools-----	10
Principal, veterans high school-----	6
Assistant director, practical nursing-----	11
Assistant director, subject field-----	11
Statistician-----	10
Assistant professor, District of Columbia Teachers College-----	13
Assistant professor, laboratory school-----	16
Chief attendance officer-----	12
Chief librarian, District of Columbia Teachers College-----	11
Clinical psychologist-----	12
Supervisor, elementary education-----	11
Psychiatric social worker-----	13
Attendance officer-----	15
Census supervisor-----	15
Child labor inspector-----	15
Coordinator, practical nursing-----	15
Counselor, elementary and secondary schools-----	15
Counselor, placement-----	15
Instructor, District of Columbia Teachers College-----	15
Instructor, laboratory schools-----	15
Librarian, elementary and secondary schools-----	15
Librarian-----	15
Research assistant-----	15
School psychologist-----	15
School social worker-----	15
Speech correctionist, District of Columbia Teachers College-----	15
Teacher, elementary and secondary schools-----	15

## AMENDMENTS

1962—Section 101 (4) of act Oct. 24, 1962, amended the section by changing "1958" to "1963", "1957" to "1962" in the first sentence; by changing "1957" to "1962," "1958" to "1963" in the second sentence and by eliminating the balance of the sentence beginning with the word "except"; and by eliminating the last sentence in the section. It also amended the section by substituting new comparative tables as above set out.

## EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

## SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

## § 31-1531. Method of assignment to service steps—Promotion of employees.

(a) On January 1, 1963, each permanent employee assigned to salary classes 2 through 15 in accordance with section 31-1501 and section 31-1521 shall be assigned to the same numerical service step on the schedule for his salary class, or salary class and group, under this chapter as he occupied on December 31, 1962, except that employees assigned to salary class 15 on January 1, 1963, who on December 31, 1962, were on service step 13 shall be assigned to service steps for their respective groups as follows: An employee who on January 1, 1963, has completed fifteen years of creditable service but less than eighteen years shall be assigned to longevity step X, and an employee who on January 1, 1963, has completed eighteen years of creditable service shall be assigned to longevity step Y. In determining years of creditable service for placement on service steps, credit shall be given for previous service in accordance with the provisions of this chapter governing the placement of employees who are newly appointed, reappointed, or reassigned or who are brought under this chapter in accordance with the provisions of section 31-1522.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under this chapter next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such re-evaluation, but no employee shall receive a salary above the top step for his class, or class and group, or below the step already occupied by him. If such re-evaluation places the employee on a higher numerical service step than the one already occupied by him, he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. Beginning on July 1, 1959, each permanent employee who has not yet reached the highest service step for his salary class, or class and group, under this chapter shall advance one such step each year until he reaches the highest step for his class, or class and group, except that each employee in salary class 15 shall advance from service step 13 to longevity step X on July 1 following the completion of fifteen years of creditable service; from longevity step X to

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 1; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1232, Pub. L. 87-881, title I, § 101(4).)



longevity step Y on July 1 following the completion of eighteen years of creditable service: *Provided*, That beginning with the step increase normally due July 1, 1963, the Board of Education, on the written recommendation of the Superintendent of Schools, is authorized to deny any such salary advancement for the year immediately following any year in which the employee fails to receive a performance rating of 'satisfactory' from his superior officer. (Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1233, Pub. L. 87-881, title I, § 101 (5) (6).)

#### AMENDMENTS

1962—Section 101(5) of act Oct. 29, 1962, amended subsection (a) to read as above set out. For comparison see subsection (a) in main volume of the Code. Subsection (b) was amended, by section 101(6) of the same act, by striking the period at the end thereof and inserting the matter following the word "group" beginning with word "except" to the end of the paragraph.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

#### § 31-1532. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.

(a) Each employee who is newly appointed or reappointed to a position under section 31-1501, except the Superintendent of Schools, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each such employee to determine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 15 shall receive one year of such placement credit for each year of satisfactory service, not in excess of five years, in the same type of position regardless of school level, in an educational system or institution of recognized standing outside the District of Columbia public schools, as determined by the Board: *Provided*, That employees appointed to the positions of attendance officer, census supervisor, child labor inspector, counselor, librarian, research assistant, school psychologist, and school social worker shall also receive one year of placement credit for each year of satisfactory service in a teaching position, but not in excess of five years for all types of service rendered outside the school system, and persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board, but not in excess of five years for any combination of trade experience and educational service outside the school system. Employees newly appointed or reappointed to positions of assistant professor (salary class 13), chief librarian and associate professor (salary class 11), and professor (salary class 8) shall receive one year of placement credit for

each year of satisfactory service, not in excess of five years, in a position of the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 1 to 14 inclusive, except the positions of chief librarian and assistant professor, associate professor and professor, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. Employees reappointed or reassigned to positions in classes 2 to 15 inclusive shall receive one year of placement credit for each year of satisfactory service in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no employee shall receive more than five years of placement credit for previous service in any combination of the following: (1) service rendered outside the public school system, (2) service rendered as a temporary employee within such system, and (3) service rendered prior to reappointment after resignation from such system. Credit for service rendered either inside or outside the District of Columbia public schools shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later.

\* \* \* \* \*

(Aug. 5, 1955, 69 Stat. 527, ch. 569, title IV, § 7; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101 (7).)

#### AMENDMENTS

1962—Section 101 (7) of act Oct. 24, 1962, amended subsection (a) by striking the figure "18" in two places and changing it to "15"; by striking the figure "17" and changing it to "14", and by striking out the fourth sentence and substituting a new fourth sentence as above set out for comparison of same sentence see main volume of the Code.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1052] of this title shall take effect as of January 1, 1963."

#### § 31-1533. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position covered by section 31-1501 shall receive his first increase in salary in that position on the beginning day of his second year of probationary service in the position; he shall receive his second increase in salary in that position on the date when his appointment or promotion to the position is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position in accordance with section 31-1531 and section 31-1532, except that beginning with any



such step increase normally due subsequent to June 30, 1963, the Board of Education, on written recommendation of the Superintendent of Schools, is authorized to deny any such increase in salary for the year immediately following any year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

\* \* \* \* \*

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 8; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(8).)

AMENDMENTS

1962—Section 101(8) of act Oct. 24, 1962, amended subsection (a) by striking the period at the end of the section and adding thereto the matter beginning with the word "except" and ending with the word "Board".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

§ 31-1536. Promotions—Assignment to numerical service step.

Any employee in a salary class covered by section 31-1501, when promoted to a higher-paid salary class, shall be assigned to the lowest numerical service step on the schedule for his new class, or class and group, which will give him an immediate increase in annual salary rate at least equal to the sum of the following:

(1) Any annual service increment or longevity increment to which the employee would have been entitled in his former salary class at the time of his promotion; and

(2) The annual service increment scheduled for his new class and group: *Provided*, That no such employee shall be assigned to a higher numerical service step on the schedule for his new class, or class group, than he would have occupied on the schedule from which promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 11, eff. July 1, 1955; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(11).)

AMENDMENTS

1962—Section 101(9) of act Oct. 24, 1962, amended clause (1) by inserting after the word "increment" the words "or longevity increment."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

§ 31-1542. Evening, summer, and Americanization schools—Salaries.

(a) The Board is hereby authorized to conduct as parts of the public school system, summer schools, evening schools, and an Americanization School, under and within appropriations made by Congress. The pay rates for teachers, officers, and other educational employees in the summer and evening schools shall be as follows:

Classification	Step 1	Step 2	Step 3
Per Diem			
SUMMER SCHOOL (REGULAR)			
Teacher, elementary and secondary schools, and instructor, District of Columbia Teachers College.....	\$19.72	\$21.69	\$23.66
Assistant professor, District of Columbia Teachers College.....	22.68	24.94	27.21
Associate professor, District of Columbia Teachers College.....	25.64	28.20	30.76
Assistant principal, elementary and secondary schools.....	28.59	31.45	34.31
Supervising director, and professor District of Columbia Teachers College.....	28.59	31.45	34.31
Principal, elementary and secondary schools.....	31.55	34.70	37.86
Per Diem			
VETERANS' SUMMER HIGH SCHOOL CENTERS			
Teacher.....	\$29.58	\$32.54	\$35.49
Per Period			
EVENING SCHOOLS			
Teacher.....	\$5.04	\$5.39	\$5.79
Assistant principal.....	6.98	7.68	8.40
Principal.....	7.71	8.48	9.25

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 13; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(10) (11).)

AMENDMENTS

1962—Section 101(10) of act Oct. 24, 1962, amended subsection (a) by striking the classification and pay rates tables and inserting new tables as above set out.

Section 101(11) amended subsection (b) by striking "January 1, 1958" and inserting "January 1, 1963".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

§ 31-1543. Classification of certain employees as teachers.

Each employee assigned to salary class 15 in the schedule provided in section 31-1501, each assistant professor in salary class 13, each associate professor and chief librarian in salary class 11 and each professor in salary class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(12).)

AMENDMENTS

1962—Section 101(12) of act Oct. 24, 1962, amended section to read as above set out. For comparison of section before this amendment see main volume of Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

§ 31-1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.

On and after January 1, 1963, sections 31-698 and 31-698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes

6 through 14, inclusive, under this chapter, except the following: Executive assistant to deputy superintendent and assistants to assistant superintendents in salary class 6; dean of students, District of Columbia Teachers College, professor, District of Columbia Teachers College, director, school attendance, and registrar, District of Columbia Teachers College, in salary class 8; assistant director, department of food services, in salary class 9; statistician, in salary class 10; associate professor, District of Columbia Teachers College, and chief librarian, District of Columbia Teachers College, in salary class 11; and assistant professor, District of Columbia Teachers College, in salary class 13. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 15, Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I; § 101(13).)

#### AMENDMENTS

1962—Section 101(13) of act Oct. 24, 1962, amended section to read as above set out. For comparison of section before this amendment see main volume of Code.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

§ 31-1545. Sick and emergency leave provisions applicable to certain employees.

On and after January 1, 1963, sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697 shall apply to employees of the Board whose salaries are fixed in salary class 15, and to the following employees in the salary classes indicated: Professor, class 8; associate professor, class 11; assistant professor, salary class 13; and chief librarian, salary class 11, under this chapter. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 16; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(14).)

#### AMENDMENTS

1962—Section 101(14) amended section by striking "1958" and inserting "1963"; by striking "18" and changing to "15"; by striking "chief librarian and assistant professor, salary class 14" and inserting in lieu thereof "assistant professor, salary class 13; and chief librarian salary class 11."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."





## TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS

### Chapter 2.—WASHINGTON HUMANE SOCIETY

§ 32-205. Police to arrest law violators at request of member of society—Evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the District of Columbia Court of General Sessions for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 12.)

#### AMENDMENT

1963—Section 12 of act Dec. 23, 1963, amended the section to read as above set out.

### Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

§§ 32-317, 32-318, 32-319, 32-320. Omitted.

#### CODIFICATION

These sections dealing with Freedmen's Hospital, are omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-267 (hereinafter set out in full) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

ACT SEPT. 21, 1961, TRANSFERRING FREEDMEN'S HOSPITAL TO HOWARD UNIVERSITY

#### TRANSFER OF FREEDMEN'S HOSPITAL

SECTION 1. (a) For the purpose of assisting in the provision of teaching hospital resources for Howard University, thereby assisting the university in the training of medical and allied personnel and in providing hospital services for the community, the Secretary of Health, Education, and Welfare shall, pursuant to agreement with the board of trustees of Howard University, transfer to Howard University, without reimbursement, all right, title, and interest of the United States in certain lands in the District of Columbia, together with the buildings and improvements thereon, and the personal property used in connection therewith (as determined by the Secretary), commonly known as Freedmen's Hospital.

(b) It is the intent of Congress (1) that the transfer of Freedmen's Hospital to Howard University be effected as soon as practicable, (2) to assure the well-being of patients at Freedmen's Hospital during the period of transition, and (3) that the transfer be effected with minimum dislocation of the present hospital staff and maximum consideration of their interests as employees.

(c) The Secretary of Health, Education, and Welfare shall report to the Congress the terms of the agreement for such transfer.

#### PROVISION FOR EMPLOYEES OF HOSPITAL

SEC. 2. (a) The agreement for transfer of Freedmen's Hospital referred to in section 1 shall include provisions to assure that—

(1) all individuals who are career or career-conditional employees of the hospital on the day preceding the effective date of the transfer of the hospital, except those in positions with respect to which they have

been notified not less than six months prior to the effective date of such transfer that their positions are to be abolished, will be offered an opportunity to transfer to Howard University;

(2) Howard University—

(A) will not reduce the salary levels for such employees who transfer,

(B) will deposit currently (i) in the civil service retirement and disability fund created by the Act of May 22, 1920, the employee deductions and agency contributions required by the Civil Service Retirement Act, and (ii), in the fund created by section 5(c) of the Federal Employees' Group Life Insurance Act of 1954 the employee deductions and agency contributions required by the Federal Employees' Group Life Insurance Act of 1954,

(C) will provide other benefits for such employees as nearly equivalent as may be practicable to those generally applicable, on the effective date of the transfer of the hospital, to civilian employees of the United States, and

(D) in determining the seniority rights of its employees, Howard University will credit service with Freedmen's Hospital performed by such employees who transfer, on the same basis as it would credit such service had it been performed for such University;

(3) the transfer will become effective not later than the beginning of the second month which begins after construction of the new hospital facilities authorized by section 3 is commenced.

(b) The Department of Health, Education, and Welfare shall make every reasonable effort to place in other comparable Federal positions all individuals who are career or career-conditional employees of Freedmen's Hospital on the date of enactment of this Act and who do not transfer to Howard University.

(c) Each individual who is an employee of Freedmen's Hospital on the date of enactment of this Act and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of the Civil Service Retirement Act, the Federal Employees' Group Life Insurance Act of 1954. For purposes of section 3121(b) of the Internal Revenue Code of 1954 and section 210 of the Social Security Act, service performed by such individual during the period of his employment at Howard University shall be regarded as though performed in the employ of the United States.

#### AUTHORIZATION OF CONSTRUCTION OF HOSPITAL FACILITIES

SEC. 3. For the purpose specified in section 1, there are hereby authorized to be appropriated such sums as may be necessary for the construction of a building or buildings and facilities, including equipment, and for remodeling of existing buildings (including repair and replacement of equipment) which are to be combined with the building or buildings and facilities so constructed, to provide a hospital with a capacity of not to exceed five hundred beds.

#### CONTINUED OPERATION OF FACILITIES

SEC. 4. If, within twenty years after the completion of construction (as determined by the Secretary of Health, Education, and Welfare) of the new hospital facilities authorized by section 3, any of such facilities, or of the facilities transferred pursuant to section 1 and combined with such new facilities, are transferred by Howard University to any other person or entity (except a transfer to the United States) or cease to be operated by the university as teaching hospital facilities, the United States



shall be entitled to recover from the transferee or the university, in the case of a transfer, or from the university, if there is no transfer, an amount equal to the then value of such facilities (or so much thereof as is involved in the transfer, as the case may be), such value to be determined by agreement of the parties or by action brought in the United States District Court for the District of Columbia.

#### AUTHORIZATION OF APPROPRIATIONS FOR OPERATION

SEC. 5. In order to facilitate operation of teaching hospital facilities at Howard University, there are authorized to be appropriated annually to the university such sums as the Congress may determine, for the partial support of the operation of such facilities giving consideration to the cost imposed by the provisions of section 2 and the portion of the agreement under this Act relating to such provisions. The cost of operating such facilities, the appropriations pursuant to this section, and any other income derived from such operation or available for such purpose shall be identified and accounted for separately in the accounts of the university.

#### FINANCIAL POLICY

SEC. 6. It is hereby declared to be the policy of the Congress that, to the extent consistent with good medical teaching practice, the Howard University Hospital facilities shall become progressively more self-supporting. In order to further this policy, the President shall submit to the Congress a report, based on a study of the financing of the operation of the hospital, containing his recommendations on the rate at which, consistent with the above policy, Federal financial participation in such cost of operation shall be reduced. Such report shall be submitted not later than the end of the second calendar year following the year in which the construction of the new hospital facilities, authorized by section 3, is completed.

#### REPEAL OF LAWS

SEC. 7. All laws heretofore applicable specifically to Freedmen's Hospital are, to the extent of such applicability, repealed, effective with the transfer of Freedmen's Hospital pursuant to section 1.

#### TRANSFER OF FUNDS

SEC. 8. All unexpended balances of appropriations, allocations, and other funds, available or to be made available, of Freedmen's Hospital are, effective with the transfer of Freedmen's Hospital pursuant to section 1, transferred to Howard University for use in the operation of the Howard University Hospital facilities, except to the extent (determined by the Director of the Bureau of the Budget) required to meet obligations already incurred and not assumed by the university.

(Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-267, §§ 1—8.)

#### § 32-330. Discharge as cured.

In case any person adjudged to be of unsound mind in the District of Columbia who is committed to Saint Elizabeths Hospital, or any other institution, recovers his or her reason, and who is discharged from such institutions as cured, the superintendent of said Saint Elizabeths Hospital, or the official in charge of any such other institution where such person has been under treatment and has been so discharged, shall immediately thereafter file with the clerk of the United States District Court for the District of Columbia his sworn statement that such person, in his opinion, was at the time of his discharge of sound mind, and such statement shall be sufficient to authorize the court to pass an order declaring such person to be restored to his or her former legal status as a person of sound mind. (Feb. 23, 1905, ch. 738, § 2, 33 Stat. 740; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court

for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

#### CODIFICATION

"United States District Court for the District of Columbia" was inserted into the section by the codifiers in lieu of "Supreme Court of the District of Columbia" which was the name of the court at the time of enactment of the section.

### Chapter 4.—SAINT ELIZABETHS HOSPITAL

#### § 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

##### NOTES TO DECISIONS

##### 1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

#### § 32-417f. Persons entitled to care in a Veterans' Administration facility.

##### NOTES TO DECISIONS

##### 1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

### Chapter 7A.—AID TO DEPENDENT CHILDREN

#### §§ 32-751 to 32-765. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 24.

Sections of act June 14, 1944, 58 Stat. 277, ch. 257, §§ 1—18, related to aid to dependent children under eighteen years of age. It defined a dependent child as one who has been deprived of parental support by reason of death, continued absence from the home, or physical or mental incapacity of a parent. The sections defined the eligibility of a child for aid, provided for administration of the sections by the Board of Public Welfare, investigation by said Board and determination of amount and starting date of assistance, review of the Board's action, provided for cooperation between the Board and Social Security Board of the United States, and prescribed penalties for procuring assistance by fraud, and contained other implementing provisions. Subject matter is now covered by title 3, chapter 2.

##### EFFECTIVE DATE

See note to sections 3-201 and 3-204.

##### SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [32-751 to 32-756] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or

assistance been granted under the provisions of this Act" [Title 3, ch. 2].

Chapter 7B.—PLACEMENT OF CHILDREN IN  
FAMILY HOMES

§ 32-781. Purpose of chapter.

NOTES TO DECISIONS

Constitutionality .50  
Evidence, sufficiency of .51

.50. Constitutionality  
Baby Broker Act is not unconstitutional as vague and indefinite. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

.51. Evidence, sufficiency of  
Evidence sustained conviction for violation of Baby Broker Act. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

§ 32-788. Penalty for operation as child-placing agency without license—Jurisdiction.

NOTES TO DECISIONS

2. Jury trial  
Defendant charged with violating Baby Broker Act for which maximum penalty was fine of up to \$300 or imprisonment up to ninety days, or both, was not entitled to jury trial. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).





## TITLE 33.—FOOD AND DRUGS

### Chapter 1.—ADULTERATION

#### § 33-111. Special services for detection of adulteration.

##### SIMILAR PROVISIONS

1963—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.  
Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.

##### CONTINUATION OF ACT APR. 8, 1960

Section continued by provisions of section 15 of act  
Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265. See note to  
section 9-501.

### Chapter 4.—NARCOTIC DRUGS

#### § 33-414. Search warrants—Requirements—Form— Contents—Return—Penalty for interfering with service.

##### NOTES TO DECISIONS

Evidence .50  
Execution of search warrant .51  
Search and seizure 1  
Sentences 1.50

##### .50. Evidence

Evidence supported finding of intent necessary for  
convictions of petit larceny of meperidine and unlawful  
possession of meperidine and biphethamine. *D. A. Fisher*  
*v. United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

##### .51. Execution of search warrant

Search warrant was properly executed, though police  
allegedly tricked defendant by allowing defendant to  
think that only janitor was at door of apartment, where  
door was opened three or four inches by defendant, and  
one of the officers thrust his badge and search warrant  
through aperture and stated that he had a search war-  
rant, and when defendant started to run, the officer  
pulled door open, and night chain slipped off, and that  
officer then entered and placed defendant under arrest.  
*C. Jones v. United States* (1962, 304 F. 2d 381, 113 U.S. App.  
D.C. 14).

##### 1. Search and seizure

Defendant's cooperation, before arrest, with police was  
voluntary where he did not deny involvement of dis-  
appearance of meperidine and biphethamine but gave pur-  
ported explanation thereof, voluntarily told police officer  
that packages in his automobile trunk were from em-  
ployer, and repeated such statements to employer in  
officer's presence. *D. A. Fisher v. United States* (D.C.  
Mun. App. 1962, 183 A. 2d 553).

##### 1.50. Sentences

Defendant's assignment of error relating to sentences  
imposed for conviction of petit larceny and unlawful  
possession of meperidine would not be considered, where  
such sentences were each less than sentence imposed for  
conviction of unlawful possession of biphethamine, and  
the conviction involving biphethamine was valid. *D. A.*  
*Fisher v. United States* (D.C. Mun. App. 1962, 183 A. 2d  
553).

#### § 33-416. Common nuisances.

##### NOTES TO DECISIONS

Probable cause for arrest 3  
Warrant of arrest 4

##### 3. Probable cause for arrest

Police, who were cruising area, had probable cause to  
arrest defendant, whom they had previously arrested for

narcotics violation, when they saw him with known nar-  
cotics user, and evidence seized from person of defendant  
who, upon request, produced capsules from hand and  
pocket was admissible. *A. O. Freeman v. United States*  
(1963, 322 F. 2d 426,—U.S. App. D.C.—).

Admission of testimony, at trial judge's request, that  
police officer had previously arrested defendant for nar-  
cotics violation was error which was prejudicial to de-  
fendant who did not take stand during his prosecution  
for narcotics violation. *Id.*

##### 4. Warrant of arrest

Where police officers received information from reliable  
informant in afternoon that person for whom arrest  
warrant was outstanding could be found at defendant's  
house, but officers made no attempt to serve warrant  
until 8:30 the next day, delay between time that officers  
received tip and time they went to defendant's house to  
make arrest did not negate their bona fide, reasonable  
belief that accused was still in the house, and narcotic  
drugs, which were found in a closet by police officers  
while making a search for persons sought after identi-  
fying themselves and forcing entry, were admissible  
against defendant. *I. M. Palmer v. United States* (D.C.  
App. 1963, 192 A. 2d 801).

#### § 33-416a. Vagrancy—Narcotic drug user—Penalties— Conditions imposed.

##### NOTES TO DECISIONS

##### 4.50. Probable cause for arrest

Police, who were cruising area, had probable cause to  
arrest defendant, whom they had previously arrested for  
narcotics violation, when they saw him with known nar-  
cotics user, and evidence seized from person of defendant  
who, upon request, produced capsules from hand and  
pocket was admissible. *A. O. Freeman v. United States*  
(1963, 322 F. 2d 462,—U.S. App. D.C.—).

Admission of testimony, at trial judge's request, that  
police officer had previously arrested defendant for nar-  
cotics violation was error which was prejudicial to de-  
fendant who did not take stand during his prosecution  
for narcotics violation.

### Chapter 7.—REGULATIONS AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

#### § 33-710. Arrest without warrant.

##### NOTES TO DECISIONS

##### 1. Arrest without warrant

Defendant was not under arrest on day he was in-  
formed of conduct of investigation, was questioned for  
five minutes in his employer's presence, and went volun-  
tarily to police headquarters to take polygraph test, nor  
on following day, when he returned to take test and,  
almost immediately after it, took police officer to auto-  
mobile and gave him package containing employer's drug.  
*D. A. Fisher v. United States* (D.C. Mun. App. 1962, 183  
A. 2d 553).





## TITLE 35.—INSURANCE

Chap.		Sec.
16.	Credit Life, Accident and Health Insurance.....	35-1601

### Chapter 1.—INSURANCE DEPARTMENT— GENERAL PROVISIONS

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

#### NOTES TO DECISIONS

##### 1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

§ 35-105. Statement of business in District of Columbia.

#### NOTES TO DECISIONS

##### 1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

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Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members

in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

### Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

#### NOTES TO DECISIONS

Benefit order 1  
Engaging in insurance 1.50

##### 1. Benefit order

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks, etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

##### 1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

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The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*



## Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

### § 35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

#### NOTES TO DECISIONS

Engaging in insurance .50  
Jurisdiction 1  
License requirements 2  
Superintendent's authority 3  
Trial de novo 4

#### .50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

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#### 1. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 288 F. 2d 778, 110 U.S. App. D.C. 112).

#### 2. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dep't of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

#### 3. Superintendent's authority

Statute authorizing District of Columbia Superintendent of Insurance, upon satisfying himself by such investigation as he may deem proper or necessary, to refuse to issue or renew certificate, does not authorize superintendent to hold hearing, and grant of hearing by him on question of renewal of certificate was gratuitous. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

#### 4. Trial de novo

It was proper for District Court to grant trial de novo, rather than merely reviewing administrative record, in insurer's action against District of Columbia Superintendent of Insurance to set aside ruling denying renewal of certificate of authority, where statutes did not provide for administrative hearing, notwithstanding fact

that superintendent had granted one. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

### § 35-407. Annual statement—Verification—Failure to make.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. If any such company shall fail to file the annual statement herein required, the Superintendent may thereupon revoke its certificate of authority to transact business in the District of Columbia. The Superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 8; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88-193, § 1.)

#### AMENDMENT

1963—Act Dec. 5, 1963, amended section by striking the last sentence and adding thereto two new sentences beginning with the words "If any" and ending with the word "District."

### § 35-410. Contents of advertisements—Penalty for violation.

\* \* \* \* \*

*Provided, however,* That this section shall not be deemed to prevent an alien company from furnishing to its policyholders in the District of Columbia its annual report to policyholders of its domicile.

\* \* \* \* \*

(June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 11; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88-193, § 2.)

#### AMENDMENT

1963—Act Dec. 5, 1963, amended the section by adding at the end of the first paragraph the proviso clause above set out.

### § 35-414. False statements in application for insurance.

#### NOTES TO DECISIONS

Misrepresentation by beneficiary 6.50  
Test of materiality 9.50

#### 6.50. Misrepresentation by beneficiary

Misrepresentation by beneficiary, in his application for a life policy on his month-old daughter of fact that he had applied to another insurer for a similar policy, even if participated in by insurer's agent, was material and constituted a valid defense to recovery on the policy. *R. L. Jannenga v. National Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

#### 9.50. Test of materiality

Test of materiality of a statement in an insurance application is whether the representation would reasonably influence insurer's decision as to whether it should insure. *R. L. Jannenga v. Nationwide Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).



§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged—False statements—Penalty.

Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof.

(Added July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 1.)

AMENDMENT

1963—Act July 8, 1963, amended the section by adding the above sentence to follow the second sentence in the section.

NOTES TO DECISIONS

- Predication of indictment 1
- Propriety of regulation 2
- Sufficiency of indictment 3
- Weight of Superintendent's decisions 4

1. Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

2. Propriety of regulation

Superintendent of insurance does not have power to promulgate regulations, and was not authorized to make felonious even a knowingly false answer to a question which Congress had not made material. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

3. Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

4. Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc. v. J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

§ 35-427. Appeal from rulings of Superintendent—Procedure—Costs and supersedeas bond—Liability of Superintendent.

NOTES TO DECISIONS

- Jurisdiction 2
- Weight of Superintendent's decisions 3

2. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had juris-

diction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

3. Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc. v. J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

§ 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation—False statement—Penalty.

Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof.

(Added July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 1.)

AMENDMENT

1963—Act July 8, 1963, added the above sentence to follow the second sentence in the section.

Chapter 5.—DOMESTIC LIFE COMPANIES

§ 35-535. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

- (1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory, or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

(10) (a) \* \* \*

(b) In addition to the investments authorized in paragraph (10) (a), common stocks of any insurance company (other than as prohibited in section 35-540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however,* That stocks may be acquired under this paragraph (10) (b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the



acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus and contingency reserves in excess of \$150,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$150,000, and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company. (Sept. 14, 1961, 75 Stat. 514, Pub. L. 87-245, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 1).

#### AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (1) so as to permit investments in securities of the Inter-American Development Bank.

1961—Act Sept. 14, 1961, amended subsection (10) by designating it as subsection (10) (a) and by adding a new par. to said subsection designated as (10) (b).

### Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

#### § 35-701. Superintendent to value policies—Legal standard of valuation.

\* \* \* \* \*

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35-705b (the standard nonforfeiture law).

(1) The minimum standard for the valuation of all such policies and contracts shall be the Commissioners reserve valuation method defined in paragraph (2),  $3\frac{1}{2}$  per centum interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the next to the last paragraph of section 35-705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35-701b(d), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the op-

tion of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Superintendent.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the Superintendent, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Superintendent.

(As amended Oct. 3, 1962, 76 Stat. 711, Pub. L. 87-738, § 1.)

#### AMENDMENTS

1962—Section 1 of act Oct. 3, 1962, amended paragraph (1) of subsection (c) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

#### § 35-705b. Standard nonforfeiture law.

\* \* \* \* \*

(d) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter de-



fined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: *Provided, however,* That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii), and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the next succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the

present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-six.

In the case of industrial policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and



present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1962, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-eight.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(g) After February 19, 1948, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950: *Provided, however*, That the operative date of the last two

paragraphs of subsection (d) shall be as stated therein. (As amended Oct. 3, 1962, 76 Stat. 712, Pub. L. 87-738, § 2.)

#### AMENDMENTS

1962—Section 2 of act Oct. 3, 1962, amended subsection (d) to read as above set out; subsection (e) by adding the matter set out in clause (v) and subsection (g) by changing the word "paragraph" in the last sentence to read "two paragraphs."

#### § 35-710. Group life insurance.

(7) Any policy issued pursuant to this section, except a policy issued to a creditor pursuant to subsection (2) hereof, may be extended to insure the spouses and minor children of insured persons, or any class or classes thereof, subject to the following requirements:

(a) The premiums for the insurance shall be paid by the policy holder either from the policy holder's funds or from funds contributed by the insured person, or from both. If any part of the premium is to be derived from funds contributed by the insured persons, the insurance with respect to spouses and children may be placed in force only if at least 75 per centum of the then eligible employees or members of the organization or the association, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the insured persons, all such eligible employees or members of the organization or the association excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(8) A policy of group life insurance issued to a credit union organized pursuant to the laws of the District of Columbia or pursuant to the Federal Credit Union Act, which credit union shall be deemed the policyholder, to insure members of the credit union for the benefit of persons other than the credit union, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the credit union, or all of any class or classes thereof determined by age, or by membership in the credit union, or both.

(b) The premium for the policy shall be paid by the policyholder, either from the credit union's own funds, or from charges collected from the insured members specifically for the insurance, or both. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible mem-



bers, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issue.

(d) The amount of insurance on the life of any member shall not exceed the total amount of his shares and deposits in the credit union or \$2,000, whichever is less. Such policy may be issued either in addition to, or in lieu of, a policy issued pursuant to section 35-710(2).

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all the members of the organization, or all of any class or classes thereof determined by conditions pertaining to their membership in the organization, or both.

(b) The premium for the policy shall be paid by the policyholder either wholly from the organization's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance, or from funds wholly contributed by the insured members specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 60 per centum of the then eligible members or a minimum of four hundred members, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issuance.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. No policy may be issued which provides term insurance on any organization member which, together with any other term insurance under any group life insurance policy or policies, exceeds \$20,000, unless 150 per centum of the annual compensation of such person exceeds \$20,000, in which event all such term insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(Sept. 14, 1961, 75 Stat. 519, Pub. L. 37-249, § 1; Oct. 23, 1962, 76 Stat. 1131, Pub. L. 87-855, §§ 1, 2.)

#### REFERENCE IN TEXT

The Federal Credit Union Act, referred to in text, is set out as chapter 14, in Title 12 of the United States Code.

#### AMENDMENTS

1962—Act Oct. 23, 1962, amended section by adding subsection 9 thereto, as above set out.

1961—Act Sept. 14, 1961, amended section by adding subsection 8 thereto, as above set out.

#### CROSS REFERENCE

For provisions relating to amount of credit life, accident, and health insurance, see § 35-1604.

#### § 35-711. Standard provisions for policies of group life insurance.

\* \* \* \* \*

*Provided, however,* (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to section 35-710(8);

\* \* \* \* \*

(Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-740, § 1.)

#### AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (a) of the proviso in the first sentence by adding a comma after the word creditor and the words "or to policies issued pursuant to section 10(8) [35-710(8)] of this chapter."

#### § 35-717. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessities contracted for after the commencement of disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16a.)

#### CODIFICATION

This section is set out in this supplement to correct a typographical error which appears in the main volume of the code.

#### Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

#### § 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

#### AMENDMENTS

1962—Section 2 of act Oct. 5, 1962, 76 Stat. 752, Pub. L. 87-757, amended the second sentence of the section by striking out the phrase "which shall not exceed fifty-five years and that medical examinations are required of applicants for life benefits".

#### Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

#### § 35-1301. Short title.

#### NOTES TO DECISIONS

##### 1. Labor organization

The 1940 act requiring that all fire, marine, and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and



regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

**§ 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.**

**NOTES TO DECISIONS**

**1. Labor organization**

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

**§ 35-1303. Definitions.**

**NOTES TO DECISIONS**

Engaging in insurance .50  
Labor organization 1

**.50. Engaging in insurance**

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Assn. Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

**1. Labor organization**

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

**§ 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.**

**NOTES TO DECISIONS**

**1. License requirements**

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of

which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.**

A domestic company shall invest its funds only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

\* \* \* \* \*

(Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 2.)

**AMENDMENTS**

1962—Act Oct. 3, 1962, amended clause (1) of section so as to permit investments in securities of the Inter-American Development Bank.

**§ 35-1323. Foreign or alien companies, admission—Certificate of authority required.**

**NOTES TO DECISIONS**

**1. License requirements**

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.**

**NOTES TO DECISIONS**

**1. Doing business**

Activity of insurer, not licensed to do business in the District of Columbia, in issuing policy to resident of district, who entered into contract in district, was sufficient "doing business" to authorize substituted service on Superintendent of Insurance in insured's subsequent action against insurer, and such service was valid. *United States Liability Ins. Co. v. A. Handy* (D.C. Mun. App. 1961, 173 A. 2d 208).

**§ 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited—Penalties for perjury.**

\* \* \* \* \*

The person to whom the license may be issued shall file sworn answers, subject to the penalties of

perjury, to such interrogatories as the Superintendent may require.

\* \* \* \* \*

(Amended July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 2.)

#### AMENDMENT

1963—Act July 8, 1963, amended the second sentence to read as above set out.

**§ 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal—False statements—Penalty.**

Any applicant who, in connection with such application for renewal of an expiring license, willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement under oath, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof. (Added July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 3.)

#### AMENDMENT

1963—Act July 8, 1963, amended the section by adding the sentence above set out.

#### NOTES TO DECISIONS

##### .50. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.**

#### NOTES TO DECISIONS

##### 1. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Supt. of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

### Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

#### Sec.

- 35-1601. Title—Scope of chapter.
- 35-1602. Definitions.
- 35-1603. Forms of credit life insurance and credit accident and health insurance.
- 35-1604. Amount of credit life insurance and credit accident and health insurance.
- 35-1605. Term of credit life insurance and credit accident and health insurance.
- 35-1606. Provisions of policies and certificates of insurance—Disclosure to debtors.
- 35-1607. Filing, approval, and withdrawal of forms.
- 35-1608. Refunds.
- 35-1609. Claims.
- 35-1610. Existing insurance — Choice of insurer.
- 35-1611. Enforcement.
- 35-1612. Judicial review.

**§ 35-1601. Title—Scope of chapter.**

(a) This chapter regulating credit life insurance and credit accident and health insurance in the District of Columbia may be cited as "The Act for

the Regulation of Credit Life Insurance and Credit Accident and Health Insurance".

(b) All life insurance and all accident and health insurance in connection with loans or other credit transactions of less than five years duration in the District of Columbia shall be subject to the provisions of this chapter. Such insurance written in connection with a loan or other credit transaction of five years duration or more shall not be subject to the provisions of this chapter, nor shall such insurance be subject to the provisions of this chapter if the issuance of the insurance is an isolated transaction on the part of the insurer not related to a plan or regular course of conduct for insuring debtors of the creditor. (Sept. 5, 1962, 76 Stat. 580, Pub. L. 87-686, § 1.)

#### EFFECTIVE DATE

Section 14 of act Sept. 25, 1962, provides: "This Act [this chapter] shall take effect ninety days after its approval." [Sept. 25, 1962]

#### EFFECT OF REORGANIZATION PLAN NUMBERED 5 OF 1952

Section 13 of act Sept. 25, 1962, provided as follows: "Nothing in this Act [this chapter] shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act [this chapter] in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with section 3 of such plan."

#### § 35-1602. Definitions.

For the purpose of this chapter—

(a) "Commissioners" means the Commissioners of the District of Columbia;

(b) "Credit life insurance" means insurance issued on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(c) "Credit accident and health insurance" means insurance against the disability of a debtor which provides indemnity for payments on a specific loan or other credit transaction;

(d) "Creditor" means the lender of money or vendor of goods, services, or property, including a lessor under a lease intended as a security, for which payment is arranged through a loan or other credit transaction, and includes any successor to the right, title, or interest of any such lender, vendor, or lessor;

(e) "Debtor" means a borrower of money or purchaser of goods, services, or property, including a lessee under a lease intended as a security, for which payment is arranged through a loan or other credit transaction;

(f) "District" means the District of Columbia;

(g) "Indebtedness" means the amount payable by a debtor to a creditor in connection with a loan or other credit transaction; and

(h) "Superintendent" means the Superintendent of Insurance of the District of Columbia. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 2.)

**§ 35-1603. Forms of credit life insurance and credit accident and health insurance.**

Credit life insurance and credit accident and health insurance shall be issued only in the following forms:



(a) Individual policies of life insurance issued to debtors on the term plan;

(b) Individual policies of accident and health insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;

(c) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(d) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 3.)

**§ 35-1604. Amount of credit life insurance and credit accident and health insurance.**

(a) The amount of credit life insurance shall not exceed the initial indebtedness however the indebtedness may be repayable: *Provided, however,* That nothing contained herein shall be deemed to supersede or repeal the limitation on the amount of group insurance specified in section 35-710(2)(d). In cases where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled amount of unpaid indebtedness in the case of any individual policy or the actual amount of the unpaid indebtedness in the case of any group policy.

(b) The amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 4.)

**§ 35-1605. Term of credit life insurance and credit accident and health insurance.**

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurance company, commence on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days from the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewal or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund

shall be paid or credited as provided in section 35-1608. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 5.)

**§ 35-1606. Provisions of policies and certificates of insurance—Disclosure to debtors.**

(a) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy or in the case of group insurance by a group policy and individual certificates of insurance.

(b) Each individual policy or certificate of credit life insurance, each individual policy or certificate of credit accident and health insurance, and each individual policy or certificate of credit life insurance and credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurance company, and the identity by name or otherwise of the person insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit accident and health insurance, a description of the coverage, including the amount and term thereof (which in the case of group insurance may be by description rather than stated amount and term), any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, whenever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(c) Except as hereinafter provided, an individual policy or certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred.

(d) If a debtor makes a separate payment for credit life or credit accident and health insurance and an individual policy or certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance shall be delivered at such time to the debtor by the creditor. The copy of the application for or notice of proposed insurance shall be signed by the debtor and shall set forth the identity by name or otherwise of the person insured; the rate or amount of payment by the debtor separately for credit life insurance and credit accident and health insurance; and a statement that within thirty days, if the insurance is accepted by the insurance company, there will be delivered to the debtor an individual policy or certificate of insurance containing the name and home office address of the insurance company, and a description of the amount, term, and coverage including any exceptions, limitations, and restrictions. The copy of the application for, or notice of, proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this subsection is prominently set forth in such statement of account, instrument, or agreement. If a debtor does not make a separate payment for credit life or credit accident and health insurance, an applica-



tion need not be taken or a notice of proposed insurance given. In any case, upon acceptance of the insurance by the insurance company, and within thirty days of the date upon which the term of the insurance commences, the insurance company shall cause the individual policy or certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that, upon acceptance by the insurance company, the insurance shall become effective as provided in section 35-1605. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 6.)

**§ 35-1607. Filing, approval, and withdrawal of forms.**

(a) All forms of policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders delivered or issued for delivery in the District and the premium rates pertaining thereto shall be filed with the Superintendent by the insurance company, in such manner and together with such supporting information as the Superintendent may reasonably require. In any case where a group policy is made for a group in the District and the policy is neither delivered nor issued for delivery in the District, the form of policy and all other forms and premium rates referred to in the preceding sentence shall be filed with the Superintendent by the insurance company.

(b) The Superintendent may, within thirty days after the filing of any form of policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement or rider, disapprove any such form if the premium rates charged or to be charged appear by reasonable assumptions to be excessive in relation to benefits paid or to be paid, or if the form contains provisions which are unjust, unfair, inequitable, misleading, or deceptive. In determining whether to disapprove any such form the Superintendent may give due consideration to past and prospective loss experience within and outside the District, to underwriting practice and judgment to the extent appropriate, and to all other relevant factors within and outside the District, and he may take into account the experience of the individual company.

(c) If the Superintendent notifies the insurance company that the form does not comply with the requirements of this chapter, it shall be unlawful thereafter for such insurance company to issue or use such form. In such notice, the Superintendent shall specify the reason for his disapproval and state that a hearing will be granted promptly upon request in writing by the insurance company. No such policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider shall be issued or used until the expiration of thirty days after it has been so filed, unless the Superintendent shall give his prior written approval thereto.

(d) The Superintendent may, at any time after a hearing, held after not less than twenty days' written notice to the insurance company, withdraw his approval of any such form if it does not meet the requirements of this chapter.

(e) The insurance company shall not issue such forms or use them after the effective date of such withdrawal of approval.

(f) The insurance company may revise such forms and the premium rates pertaining thereto from time to time, and such revised forms and premium rates shall be filed with the Superintendent and shall be subject to all the preceding requirements of this section, in like manner as though they were original filings with the Superintendent. (Sept. 25, 1962, 76 Stat. 582, Pub. L. 87-686, § 7.)

**§ 35-1608. Refunds.**

(a) Each individual policy or certificate of credit life insurance or credit accident and health insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto: *Provided*, That the Superintendent shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the Superintendent who may disapprove such formula if he finds that it is unjust or unreasonable.

(b) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit accident and health insurance and an individual policy or certificate of insurance is not issued, the creditor shall promptly give written notice to such debtor and shall promptly make an appropriate credit to the account.

(c) The amount charged to a debtor for credit life or credit accident and health insurance shall not exceed the premium rate charged by the insurance company at the time the charge to the debtor is determined. (Sept. 25, 1962, 76 Stat. 583, Pub. L. 87-686, § 8.)

**§ 35-1609. Claims.**

(a) All claims shall be paid either by draft drawn upon the insurance company or by check of the insurance company to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified, and every insurance company shall be held to strict settlement of all such claims.

(b) It shall be unlawful for any creditor, having received any such check or draft from such insurance company, to fail to correctly credit the account, pay to or upon the direction of, or otherwise correctly account to the claimant to whom payment is due for the full amount of such check or draft, less any lawful deductions therefrom.

(c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurance company or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurance company in adjusting claims, nor, in the case of an individual creditor, shall the spouse of such creditor or any relative of the creditor or spouse within the third degree of consanguinity be so designated, nor shall any officer or employee of a corporate creditor or any spouse or relative of such officer, employee, or spouse within the third degree of consanguinity be so designated: *Provided*, That a group policyholder



may, by arrangement with the group insurance company, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurance company. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 9.)

**§ 35-1610. Existing insurance—Choice of insurer.**

When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the creditor may not require that the insurance be written through any particular insurance company or any particular agent, and the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurance company authorized to transact an insurance business within the District. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 10.)

**§ 35-1611. Enforcement.**

(a) In the case of any violation of this chapter by an insurance company, agent, solicitor, or broker, the Superintendent shall have authority to proceed in accordance with the provisions of sections 35-405 and 35-426 and sections 35-1306 and 35-1340.

(b) In the case of any violation of this chapter by a creditor or by any other person not licensed in the District as an insurance agent, solicitor, or broker, regardless of the fact that such creditor or other person is not required by law to be so licensed, the penalties and the procedure for their imposition shall be as set forth in section 35-1347. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 11.)

**§ 35-1612. Judicial review.**

Any insurance company, agent, solicitor, or broker aggrieved by any order or action of the Superintendent under this chapter may contest the validity of such order or action by appeal or through any other appropriate proceeding, in accordance with the procedures prescribed by sections 35-1348 and 35-1349: *Provided*, That any such insurance company, agent, solicitor, or broker which is licensed in the District under the Life Insurance Act approved June 19, 1934, as amended, may contest the validity of such order or action by appeal or through any other appropriate proceeding in accordance with the procedures prescribed by such Act approved June 19, 1934. (Sept. 25, 1962, 76 Stat. 585, Pub. L. 87-686, § 12.)

**REFERENCES IN TEXT**

The Life Insurance Act of June 19, 1934, referred to in text is set out in chapters 3, 4, 5, 6, 7, and 8 of Title 35, D.C. Code.

## TITLE 36.—LABOR

### Chapter 4.—MINIMUM WAGE LAW

#### SUBCHAPTER I.—MINIMUM WAGES

##### § 36-401. Definitions.

###### CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see title 40, §§ 327 to 332 and title 5, § 673c of the U.S. Code.

### Chapter 5.—WORKMEN'S COMPENSATION

#### § 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

##### NOTES TO DECISIONS

Accidental injury	2
Apportionment	5.50
Course of employment	13.50
Employers duty	18.50
Exclusiveness of remedy	23
Limitation of action	36
Questions of law	46
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##### 2. Accidental injury

Death of employee, who worked in mailing department of magazine publisher and who suffered from angina pectoris and whose work involved dragging heavy mail bags about 25 feet, "arose out of and in the course of his employment" and was due to "an accidental injury" within the meaning of Longshoremen's and Harbor Workers' Compensation Act. *M. T. Hancock, etc. v. C. Einbinder, Deputy Commissioner, etc.* (1962, 310 F. 2d 872, 114 U.S. App. D.C. 67).

##### 5.50. Apportionment

Where death was validly found to have been attributable equally to two successive injuries occurring within scope of employment by different employers, liability was properly to be apportioned equally between employers and their respective insurers insofar as death benefits and medical and funeral expenses were concerned. *United Painters & Decorators et al. v. T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

##### 13.50. Course of employment

Record supported determinations that employee's death, occurring when employer's truck, driven by employee, crashed some five hours after last customer call, arose out of and in course of employment, and that death was not occasioned solely by intoxication. *Phoenix Assurance Co. of N.Y. v. T. Britton, Deputy Commissioner etc.* (1961, 289 F. 2d 784, 110 U.S. App. D.C. 118).

##### 18.50. Employers duty

It was responsibility of employer to deny liability for compensation and medical benefits if it knew that claimant was not employee and to notify carrier accordingly so that compensation payments would not be started, and where employer did not do so, carrier had no duty to require formal hearing before starting compensation payments, and its failure to do so could not affect its right to recover premiums based on such payments.

*Gilbert Slaughterers, Inc. v. United States Fidelity and Guaranty Co.* (D.C. Mun. App. 1962, 183 A. 2d 560).

Insurer's record containing computation of premiums due under policy was, under Federal Shop Book Rule, admissible in evidence in its action to recover premiums from insured. *Id.*

##### 23. Exclusiveness of remedy

Workmen's compensation law was exclusive remedy of employee against employer for injuries sustained while employee was being driven home by another employee's husband, in accordance with arrangement made by employer. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

##### 36. Limitation of action

That federal district court had appointed a committee of person and estate of employee who allegedly had improperly been paid compensation payments for hospital and/or institutional care did not give federal district court jurisdiction over compensation carrier's action to recover payments where compensation carrier's claim was time barred by Longshoremen's and Harbor Workers' Compensation Act. *Lumbermen's Mutual Casualty Company v. M. O. Brooke et al.* (1963, 219 F. Supp. 80).

##### 46. Questions of law

Applicability of workmen's compensation law is question of law, for court, which erred in submitting question to jury. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

##### 50. Review

Scope of review of findings of deputy commissioner is narrow. *United Painters & Decorators et al. v. T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

##### 59. Third party, injury by

Question whether general contractor was a "third person" suable at common law by employee of subcontractor whose employees were covered by Workmen's Compensation Act was debatable law question where Court of Appeals had never decided question, and question had been resolved differently in other jurisdictions with similar statutes, and general contractor's settlement of personal injury claim of subcontractor's employee would not preclude indemnification from subcontractor on ground that employee's exclusive remedy was under Act. *Moses-Ecco Company, Inc. v. Roscoe-Ajax Corporation; Roscoe-Ajax Corporation v. Detwiler* (1963, 320 F. 2d 685, 115 U.S. App. D.C. 366).

##### 61. Widow

Common-law marriage is recognized in District of Columbia. *E. Matthews v. T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*





## TITLE 38.—LIENS

### Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

#### § 38-101. Mechanic's lien.

##### NOTES TO DECISIONS

Owners rights 3.50  
Preferential treatment 3.51

##### 3.50. Owner's rights

Subcontractor who filed mechanic's lien for value of certain equipment he installed recognized that property owner's right to immediate possession of such equipment was superior to his own. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73)

Contract for making alterations and additions to church building did not authorize contractor or subcontractor to remove and not replace materials where progress payment had been made in reliance on presence of such equipment. *Id.*

##### 3.51. Preferential treatment

Enforcement of claim of heating contractor for amount due on contract with owners to complete work begun by contractor under subcontract with defaulting building corporation did not contravene public policy reflected in mechanics' lien law on theory that heating contractor would receive preferential treatment over building corporation's other subcontractors. *W. E. Baylor et al. v. H. Bortolussi etc.* (D.C. App. 1963, 194 A. 2d 653).

#### § 38-103. Subcontractor.

##### NOTES TO DECISIONS

Contractor paid in full 1.50  
Subcontractor's rights 5.50

##### 1.50. Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

##### 5.50. Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

#### § 38-104. Conditions.

##### NOTES TO DECISIONS

##### 1. Lienholder's rights

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (1961, 194 F. Supp. 274).

#### § 38-106. Owner's duty.

##### NOTES TO DECISIONS

Contractor paid in full 1  
Subcontractor's rights 4

##### 1. Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co., Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

##### 4. Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (1961, 194 F. Supp. 274).

#### § 38-107. Subcontractor entitled to know terms of contract.

##### NOTES TO DECISIONS

##### 1. Subcontractor's knowledge of terms

Subcontractor was chargeable with notice of terms of general contract. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

#### § 38-110. How lien enforced.

##### NOTES TO DECISIONS

##### 4.50. Clearly erroneous

In action to enforce a mechanic's lien for labor and materials in remodeling of defendant's property, finding of the district court that there was due the plaintiff \$7,750 was not "clearly erroneous". *J. W. Curtis v. R. A. Chambers* (1962, 310 F. 2d 857, 114 U.S. App. D.C. 52).

#### § 38-124. Artisans lien.

##### NOTES TO DECISIONS

##### 1. Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed \$3,000. *N. Villacres v. E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*



## § 38-126. Enforcement by bill in equity.

## NOTES TO DECISIONS

## 1. Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed \$3,000. *N. Villacres v. E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*

## Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

## § 38-205. Lien for storage, repairs and supplies for motor vehicles.

## NOTES TO DECISIONS

Damages from loss of lien 4.50

Reinstatement of lien 8

## 4.50. Damages from loss of lien

Automobile transmission repairer who did not establish extent to which value of garage keeper's lien was

diminished by defendant's delivering possession of automobile to owner and who did not prove that he could not collect his bill from owner without resort to his lien did not sufficiently establish damage resulting from claimed loss of lien for charges in repairing transmission when owner left district without paying transmission work. *L. Flanzbaum v. S. Gordon* (D.C. App. 1963, 194 A. 2d 135).

Automobile transmission repairer who refused to pay electrician's charges for repairs on automobile which transmission repairer had delivered to electrician and who said that owner would have to pay them and that owner could take automobile if he wanted it could not recover from electrician for amount of his charges when when electrician pursuant to his instructions delivered automobile to owner who left District without paying transmission repairer. *Id.*

## 8. Reinstatement of lien

Garage Keeper's lien is not lost by releasing automobile, but may be enforced thereafter if garage keeper should again obtain lawful possession. *L. Flanzbaum v. S. Gordon* (D.C. App. 1963, 194 A. 2d 125).

After electrician, who had received possession of automobile from plaintiff who had repaired transmission, had delivered possession to owner, plaintiff's garage keeper's lien was in state of suspended animation and was not extinguished. *Id.*

## TITLE 40.—MOTOR VEHICLES

### Chapter 3.—OPERATORS' PERMITS

§ 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit.

(a) \* \* \*

\* \* \* \* \*

(2) The Commissioners or their designated agent may, upon application and the payment of a fee of \$2, issue a learner's permit, valid for a period of sixty days, to any applicant for a motor vehicle operator's permit, sixteen years of age or over, who has successfully passed all parts of the examination other than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle, used solely for purposes of pleasure and not for compensation, when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

\* \* \* \* \*

(Amended Oct. 3, 1962, 76 Stat. 710, Pub. L. 87-737, § 1.)

#### AMENDMENTS

1962—Act Oct. 3, 1962, increased the fee for learner's permits from \$1 to \$2.

#### NOTES TO DECISIONS

Law governing 7  
Restoration of permit 10.50

#### 7. Law governing

Law of Maryland, which was place of actionable wrong, governed in determining liability of mother who signed application for minor's driver's license from District of Columbia. *M. P. Tsoy etc. v. L. MacFarland et ano.* (1963, 219 F. Supp. 220).

Maryland statute imputing motor vehicle negligence of minor to person who signed his application for operator's permit applies only to one signing application for Maryland permit. *Id.*

#### 10.50. Restoration of permit

Director of Motor Vehicles did not abuse his power when he denied application of petitioner, who had accumulated 17 points for traffic violations, for restoration of operator's permit. *T. Thalís v. G. A. England, Director of Motor Vehicles etc.* (D.C. App. 1963, 193 A. 2d 855).

§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided*, That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further*, That

such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further*. That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

An individual whose permit is denied, suspended, or revoked by the commissioners or their agent may, if application for a review by the commissioners of an order for revocation or suspension is not filed, or if an application for review by them is filed, after the commissioners' decision on the review, petition the District of Columbia Court of Appeals for a review of the order or decision in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 8.)

#### AMENDMENTS

1963—Section 8 of act Dec. 23, 1963, amend subsection (a) by striking out the fourth proviso in the first sentence; by striking out the colon preceding that proviso and inserting a period in lieu thereof and by striking the second sentence and inserting in lieu thereof a new second sentence as above set out beginning with the words, "An individual".

#### NOTES TO DECISIONS

Authority to revoke 3  
Operating vehicle after revocation 6  
"Operator" defined 7

#### 3. Authority to revoke

Neither order of Commissioners of District of Columbia giving Director of Motor Vehicles full authority to act for Commissioners in suspension of operator's permit nor statute authorizing Commissioners or their designated agents to suspend operator's permit where there has been breach of usual and reasonable rules and regulations made concerning control of traffic authorized Director of Motor Vehicles to suspend operating permit of petitioner merely because petitioner violated regulation providing that no owner of motor vehicle shall allow it to be operated by any individual who is not duly licensed operator. *F. Justin Mason v. Director of Motor Vehicles etc.* (D.C. Mun. App. 1962, 186 A. 2d 893).

Director of Motor Vehicles did not exceed his discretionary power in revoking driver's license on ground that licensee who had been convicted of housebreaking, larceny, and destroying movable property and who had previously been convicted of crimes in 1940, 1941, 1952, 1958, 1960 was morally unfit to operate a motor vehicle. *S. W. James v. Director of Motor Vehicles, etc.* (D.C. App. 1963, 193 A. 2d 209).



Driver's crimes were not required to be connected with operation of motor vehicle to authorize finding that license should be revoked on ground that he was not morally qualified to drive. *Id.*

Driver's license is privilege which may be denied as long as danger exists that licensee will make unlawful use of automobile jeopardizing safety of persons or property. *Id.*

Proof of commission of a crime, regardless of its nature, is not sufficient to disqualify a person from holding a driver's license. *Id.*

#### 6. Operating vehicle after revocation

Although operating permit would have been restored to driver had he promptly applied for restoration at end of suspension period, driver who drove vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *J. L. Brown v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 925).

#### 7. "Operator" defined

Evidence supported finding that defendant, who had been seen behind wheel manipulating automobile's controls after collision had occurred, and who was charged with driving while permit was revoked, was "operator" of vehicle within statute providing penalty for driving while permit is revoked. *D. W. Jackson, Jr. v. District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 885).

### Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

#### § 40-423. Service of process on nonresident.

##### NOTES TO DECISIONS

#### .50. Administrator

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

#### § 40-424. Operator deemed to be agent of owner.

##### NOTES TO DECISIONS

Burden of proof 5  
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Unauthorized use 24

#### 5. Burden of proof

Owner of automobile operated by another must prove that it was not being driven with his consent at time of accident to avoid liability for any negligence of driver, but presumption may be rebutted by uncontradicted denial by owner that vehicle was being operated with his consent. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Owner's lending of automobile to pharmacy as matter of courtesy for making small deliveries by pharmacy employees did not make pharmacy a co-owner of automobile within statutory presumption that in case of accident driver of automobile is owner's agent. *Id.*

Under statute providing that automobile operator in case of accident is deemed to be the agent of automobile owner, a presumption of agency is created upon proof of ownership and imposes upon owner the affirmative duty of proving that at time of accident the vehicle was not operated with his express or implied consent. *H. R. Miller v. Imperial Insurance Inc.* (D.C. App. 1963, 189 A. 2d 359).

Under statute providing that automobile operator in

case of accident shall be deemed to be the agent of automobile owner, presumption of agency can be overcome by uncontradicted proof sufficient to destroy the inference. *Id.*

Where trial court concluded that mother who was owner of automobile had not overcome the presumption that her 18-year-old son who was operating the vehicle at the time of the accident was her agent, the Court of Appeals could not say the decision was wrong as a matter of law even though 18-year-old son confirmed his mother's testimony that she had refused him permission to use the automobile and that he had taken keys and registration card from her purse, where there were circumstances which left question of mother's permission open to doubt. *Id.*

#### 11. Evidence overcoming presumption

Positive statements of automobile owner that he had never given employee of pharmacy, which borrowed automobile, right to drive automobile after business hours and that he had never known of pharmacy employee doing so destroyed any presumption that automobile was being used with his permission at time of accident and owner was not liable for injuries resulting from employee's negligence. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission. *E. M. Jones, Sr. v. J. Halun* (1961, 296 F. 2d 597, 111 U.S. App. D.C. 340).

#### 15.50. Negligent hiring

Recovery under theory of alleged negligent hiring of negligent employee requires proof that employer omitted use of ordinary care in selection of employee unfit to perform services for which he was hired, but no liability attaches to employer unless incompetency or unfitness of servant was proximate cause of injury. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Parties injured by automobile being driven for personal purposes by employee of pharmacy, to which automobile had been lent, were not entitled to recover from pharmacy on ground of alleged negligent hiring of employee, where there was no showing of unfitness of employee to perform services rendered, including operation of two motor vehicles in course of his duties at pharmacy. *Id.*

#### 21. Questions of fact

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier. *H. M. Hancock et ano. v. C. L. Morris* (D.C. Mun. App. 1961, 173 A. 2d 922).

#### 24. Unauthorized use

Inasmuch as employee admitted that he took automobile from his employer's lot in order to drive on his own errand after hours of employment and to achieve no objective directly or indirectly furthering his employer's business, employer was not liable to persons injured by employee's careless operation of automobile. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by companion of owner's son and it appeared that owner had forbidden son to let anyone else drive automobile. *E. M. Jones, Sr. v. J. Halun* (1961, 296 F. 2d 597, 111 U.S. App. D.C. 340).

#### § 40-464. Discharge in bankruptcy.

##### NOTES TO DECISIONS

#### 1. Restatement of operator's permit

Plaintiff was not entitled to reinstatement of his motor vehicle operator's permit or motor vehicle registration privileges where he failed to satisfy judgment obtained against him arising out of operation of a motor vehicle, and fact judgments were not revived after expiration



of statute of limitations and were discharged in bankruptcy, did not entitle plaintiff to renewal of such privileges. *G. A. Le v. G. A. England et al* (1962, 206 F. Supp. 957).

## Chapter 5.—PUBLIC-OWNED VEHICLES

### § 40-501. Motor vehicles to be marked.

#### REPEATED

1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 10.  
1962—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, § 10.

#### USE OF PUBLICLY OWNED VEHICLES

All motor-propelled passenger-carrying vehicles (including watercraft) owned by the District of Columbia shall be operated and utilized in conformity with section 16 of the act of August 2, 1946 (5 U.S.C. 77, 78), and shall be under the direction and control of the Commissioners, who may from time to time alter or change the assignment for use thereof, or direct the alteration of interchangeable use of any of the same by officers and employees of the District, except as otherwise provided in this act. "Official purposes" shall not apply to the Commissioners of the District of Columbia or in cases of officers and employees the character of whose duties makes such transportation necessary, but only as to such latter cases when the same is approved by the Commissioners. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 10.)

#### REFERENCE IN TEXT

Section 77 of Title 5, U.S.C., was repealed by act June 30, 1949, 64 Stat. 590, and is now covered by section 491, Title 40, U.S.C.

§ 40-502. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(33) renumbered and added Sept. 5, 1950, ch. 849, § 7(d), 64 Stat. 590.

Section dealt with the use of appropriated funds for the purchase, maintenance, driving or operating any carriage or vehicle for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, without specific authorizations or specific markings. The section was based on act Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4. It was amended to read as follows by act Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b). "All motor vehicles acquired and used for official purposes of the departmental service in the District of Columbia shall have conspicuously imprinted thereon at all times the full name of the executive department or other branch of the public service to which the same belong and in the service of which the same are used."

The section as amended was repealed by act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as renumbered and added by act Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. The subject matter is now covered by subsection (k) of section 491, Title 40, U.S.C.

§ 40-503. Omitted.

#### CODIFICATION

This section was predicated on section 40-502. However, section 40-502 as amended by the act of Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b), was repealed by the act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as added by the act of Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. Since the section on which this section was based is repealed, it is omitted. The section read as follows: "Section 40-502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)"

## Chapter 6.—REGULATION OF TRAFFIC

§ 40-603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify,

repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance, suspension, and revocation of operators' permits and the suspension and revocation of operating privileges, including rules and regulations assessing reasonable fees to reimburse the District for the cost of restoring suspended or revoked operators' permits and privileges, such fees not to exceed the amount of \$5 per restoration and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as the commissioners may designate: *Provided*, That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

\* \* \* \* \*

(As amended, Oct. 3, 1962, 76 Stat. 742, Pub. L. 87-745, § 1.)

#### AMENDMENTS

1962—Act Oct. 3, 1962, amended subsection (a) by striking out the words "issuance and revocation of operator's permits" and inserting in lieu thereof the words beginning with "issuance" and ending with "\$5 per restoration".

#### NOTES TO DECISIONS

##### 2.50. Commissioners' discretion

The designation by commissioners of the District of Columbia of intersections for installation of traffic control signals is essentially legislative in character and is result of commissioners' exercise of discretion and judgment, and failure to establish signal at intersection was not such negligence as would make District liable for death of pedestrian who was killed by motor vehicle while crossing street. *E. C. Urow, Administratrix etc. v. District of Columbia* (1963, 316 F. 2d 351, 114 U.S. App. D.C. 350).

Complaint alleging that negligence of District of Columbia in failing to provide traffic control device at intersection caused death of plaintiff's decedent who was struck by motor vehicle while crossing street did not state claim for relief within exception to general rule of municipal immunity with regard to obligation to keep streets in safe condition after being put on notice of defect. *Id.*

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

#### CROSS REFERENCE

Deposit of fees in special account in highway fund, see section 40-808.

§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

#### NOTES TO DECISIONS

##### 4. Evidence

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. *J. R. Peterson v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 95).

Conviction for a criminal offense requires more support than a mere possibility that accused was person who committed the crime. *Id.*

Evidence sustained conviction for driving an automobile while under influence of intoxicating liquor. *F. H. Kruse v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 752).

Where two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of trial court. *Id.*



§ 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to person tested—Blood tests—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

#### NOTES TO DECISIONS

##### 2. Rule of evidence in administrative proceedings

Statute providing that, in prosecutions for operating motor vehicle while under influence of intoxicating liquor, result of chemical analysis of blood, urine or breath may be prima facie proof that defendant was under influence of intoxicating liquor has no application to administrative proceeding. *H. E. Lister v. G. A. England* etc. (D.C. App. 1963, 195 A. 2d 260.)

Result of chemical analysis of blood, urine or breath cannot be received in evidence in hearing before Department of Motor Vehicles to determine whether privilege to operate motor vehicle shall be revoked unless accompanied by expert testimony of witness qualified to interpret the result. *Id.*

Finding of hearing officer, who, in hearing to determine whether privilege to operate motor vehicle should be revoked, attempted to apply statutory standard for determining intoxication on basis of urinalysis without expert testimony of witness qualified to interpret result could not stand. *Id.*

#### § 40-616. Parking meters.

##### CROSS REFERENCE

Deposit of fees in special account in highway fund, see section 40-808.

### Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

§ 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show under oath whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application and not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the

instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon a card, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application card, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on the said card. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 1.)

##### AMENDMENTS

1963—Section 1 of act Aug. 5, 1963, amended the sixth sentence of the section by striking "each of two cards" and "cards" and inserting in lieu thereof respectively "a card" and "card" and by striking from the eighth sentence "each of the said cards" and inserting in lieu thereof "the said card".

##### EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-707. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has a card covering said motor vehicle or trailer the director shall stamp a card in the manner set forth in section 40-706. The recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on said card and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 2.)



## EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

## AMENDMENTS

1963—Section 2 of act Aug. 5, 1963, amended the first sentence by striking "cards" where same appears and inserting in lieu thereof "a card" and the second sentence by striking therefrom "each of said cards" and inserting in lieu thereof "said card".

**§ 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.**

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien and acknowledged by him in the manner provided by law for deeds of real estate. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon the card hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on the said card opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 3.)

## AMENDMENTS

1963—Section 3 of act Aug. 5, 1963, amended the second sentence by striking the words "each of the cards", and inserting in lieu thereof the words "the card" and the third sentence by striking therefrom "each of the cards" and inserting in lieu thereof "the said card".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

## EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

**§ 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.**

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in section 40-710, shall enter on the face of the certificate and on the card described in section 40-706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the

word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than three years, the Recorder of Deeds may destroy the instrument which created such lien and the index card upon which the lien information was entered: *Provided*, That no other unsatisfied lien is shown on any such index card. (July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 4.)

## AMENDMENTS

1963—Section 4 of act Aug. 5, 1963, amended the first sentence by striking "each of the cards" and inserting in lieu thereof "the card" and the last sentence by striking "cards" and inserting in lieu thereof "card".

1952—Act June 5, 1952, added the last sentence providing for destruction by the Recorder of Deeds of instrument creating lien and the index cards with the lien information on release of lien.

## EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

## EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

**§ 40-713. Recording liens, place and method.**

The recorder shall maintain, in the space assigned to him in the office of the director, a file wherein he shall file a set of cards hereinbefore described under the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365, § 3; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 5.)

## AMENDMENTS

1963—Section 5 of act Aug. 5, 1963, amended the section by striking "files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other", and inserting in lieu thereof "a file wherein he shall file a set of cards hereinbefore described".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

## EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

## DESTRUCTION OF ALPHABETICAL FILES

Section 6 of act Aug. 5, 1963, provides as follows: "Alphabetical files established and maintained in accordance with the requirements of section 13 of such Act approved July 2, 1940 [§ 40-713], may, with the approval of the Commissioners of the District of Columbia, be destroyed."



## Chapter 8.—REGULATION OF PARKING

## § 40-801. Short title.

This chapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, redesignated as section 11, by act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 603.)

## AMENDMENT

1962—Section 603, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, renumbered section 10 of act February 1942, 56 Stat. 93, ch. 76, as section 11.

## § 40-808. Disposition of fees and moneys collected.

All fees and other moneys collected under this chapter, including all fees collected pursuant to section 40-616 and section 40-604a, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in a special account within the highway fund established in section 47-1901. Moneys deposited in such special account shall be available, first to defray the expenses of enforcing laws, rules, and regulations relating to the parking of vehicles in the District of Columbia; second, to defray the expenses of operating parking facilities under this chapter; third, for the acquisition, creation, and operation of parking facilities exempt from section 40-809a; and fourth, for the maintenance of highways within the District of Columbia, including the removal of snow and ice therefrom, and the purchase or rental of necessary equipment. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 601.)

## AMENDMENT

1962—Act Mar. 2, 1962, amended section to read as above set out. For provisions of section before this amendment, see main volume of Code.

## TRANSFER OF MONEYS TO HIGHWAY FUND

Section 604, act Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, provided as follows: "All fees and other moneys which have been deposited in the special account of the Treasury of the United States before the date of enactment of this title [amending sections 40-801, 40-808, 40-809 and adding section 40-809a] to the credit of the District of Columbia in accordance with section 40-808 are hereby transferred to the special account established in the highway fund by the amendment made to section 40-808 by section 601 of this title, and such funds shall be available for the purposes provided in such amendment to such section 40-808."

## § 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

The Commissioners shall include in their annual budget such amounts as may be required from the highway fund established in section 47-1901, for the purpose of carrying out the provisions of this chapter.

\* \* \* \*

(Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 602.)

## AMENDMENTS

1962—Act Mar. 2, 1962, amended first sentence of section to read as above set out.

## § 40-809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.

Notwithstanding any provision of this chapter, no real property shall be acquired under the authority of this chapter for use as a parking facility on or after the date of enactment of this section, and the Commissioners and the agency are authorized to operate and maintain only those parking facilities which have been established prior to the date of enactment of this section. No such existing parking facility shall be expanded or otherwise altered except to the extent as may be necessary to permit its continued operation in the same manner as it was being operated immediately before the date of enactment of this section. This section shall not apply to (1) any parking facility which is limited to use by officers and employees of the Governments of the United States or of the District of Columbia by reason of their employment by any such Government, (2) any fringe parking facility, and (3) any parking facility located on property of the District of Columbia beneath any elevated portion of a public highway. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, as added Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, § 603.)

## § 40-810. Parking restrictions—Vehicles impounded—Penalties.

## NOTES TO DECISIONS

## 1. Liability for impounding and ticketing vehicles

Complaint alleging that, though plaintiff had obtained from his landlord equal and coextensive parking privileges in allegedly private alley adjoining business premises involved with a defendant, such defendant had engaged in wrongful or illegal action against plaintiff's parking, resulting in ticketing and impounding of his automobile, was sufficient as against such defendant. *J. C. Gager v. "Bob Seidel" etc.* (1962, 300 F. 2d 727, 112 U.S. App. D.C. 135).

Record as a whole disclosed that plaintiff suing police officers and others for damages resulting from alleged conspiracy with respect to ticketing and impounding his automobile which he repeatedly parked in what he alleged was a private alley failed to state cause against police officers. *Id.*

## Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES

## § 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

## NOTES TO DECISIONS

## 1. Insurance regulations

Statute authorizing District Commissioners to make regulations specifying types and maximum amount of insurance which may be required of automobile buyer to protect seller from loss on installment contract, authorized Commissioners to specify what charges may be included in installment contracts. *Franklin Investment Co., Inc. v. W. N. Tobriner etc.* (1961, 296 F. 2d 451, 111 U.S. App. D.C. 329)

## TITLE 41. PARTNERSHIPS

Chap.	Sec.
3. Uniform Partnerships.....	41-301
4. Uniform Limited Partnerships.....	41-401

### Chapter 1.—LIMITED PARTNERSHIPS

§§ 41-101 to 41-109. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 31.

Section 41-101 of act Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498, dealt with number of partners and purposes for which limited partnerships could be formed.

Section 41-102, same act, section 1499, dealt with composition of and contributions to the partnership.

Section 41-103, same act, § 1500, specified the maximum number of special partners.

Section 41-104, same act, § 1501, dealt with liability of special partners.

Section 41-105, same act, § 1502, dealt with execution and composition of certificate.

Section 41-106, same act, § 1503, dealt with acknowledgment and recording of certificate.

Section 41-107, same act, § 1504, dealt with filing of affidavit as to contributions by special partners.

Section 41-108, same act, § 1505, provided that no partnership was formed until certificate and affidavit was filed.

Section 41-109, same act, § 1506, dealt with liability for false statements in certificate and affidavit.

§ 41-110. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41-110 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507, required publication of the terms of partnership in two newspapers.

§ 41-111. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 31.

Section 41-111, same act § 1508, and act June 16, 1953, 67 Stat. 62, ch. 117, § 1, dealt with the effect of failure to acknowledge and record certificate.

§ 41-112. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41-112 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508, related to affidavit as to publication by creditors or publishers of newspaper.

§ 41-113 to 41-131. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 31.

Section 41-113 of act Mar. 3, 1901, 31 Stat. 146, ch. 854, § 1510, dealt with renewal of partnerships.

Section 41-114, same act, § 1511, dealt with effect of failure to properly renew partnership.

Section 41-115, same act, § 1512, dealt with acts constituting a dissolution.

Section 41-116, same act, § 1513, provided for the effect of acts performed after dissolution.

Section 41-117, same act, § 1514, dealt with names to be used by partnership.

Section 41-118, same act, § 1515, dealt with necessary defendants in suit against partnership.

Section 41-119, same act, § 1516, dealt with effect of use of special partner's name in firm name.

Section 41-120, same act, § 1517, provided that general partners should transact the business of the partnership.

Section 41-121, same act, § 1518, dealt with the subject of withdrawal of capital contributions.

Section 41-122, same act, § 1519, dealt with reduction of capital.

Section 41-123, same act, § 1520, dealt with the subject of preferential assignments of partnership property.

Section 41-124, same act, § 1521, dealt with liability of special partner for violation of sections 41-122 and 41-123.

Section 41-125, same act, § 1522, provided that creditors should have preference over special partner.

Section 41-126, same act, § 1523, dealt with suits by and against the partnership.

Section 41-127, same act, § 1524, dealt with effect of joinder of special partners in suits against the partnership.

Section 41-128, same act, § 1525, dealt with new suits against special partners after recovery of judgment against general partner.

Section 41-129, same act, § 1526, provided that judgment in suits mentioned in sections 41-127 and 41-128 constituted prima facie evidence of amount due by partnerships.

Section 41-130, same act, § 1527, dealt with voluntary dissolutions.

Section 41-131, same act, § 1528, dealt with liability of general partners.

#### CROSS REFERENCE

See chapter 4, this title, for Uniform Limited Partnerships Law.

#### SAVINGS PROVISIONS

Sections 41-101 to 41-109, 41-111, and 41-113 to 41-131 were repealed by act of Sept. 28, 1962, except that they were continued in force as to existing limited partnerships. See section 41-429.

### Chapter 3. UNIFORM PARTNERSHIPS

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## PART I

## PRELIMINARY PROVISIONS

## § 41-301. Definition of terms.

In this chapter, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any law of the District of Columbia.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 2.)

## EFFECTIVE DATE

Enacting clause preceding section 1 of act Sept. 27, 1962, Pub. L. 87-709, 76 Stat. 636, provides: "That this Act [set out as Title 41, chap. 3, herein] to provide for the formation of partnerships in the District of Columbia and to make uniform the law with respect thereto shall be in effect in the District of Columbia on and after the date of the enactment of this Act" [Sept. 27, 1962].

## POPULAR NAME

Section 1 of act Sept. 27, 1962, provides that: "This Act may be cited as the 'Uniform Partnership Act'."

## § 41-302. Interpretation of knowledge and notice.

(1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice—

- (a) states the fact to such person, or
- (b) delivers through the mail, or by other means of communication, a written statement of the fact

to such person or to a proper person at his place of business or residence.

(Sept. 28, 1962, 76 Stat. 636, Pub. L. 87-709, § 3.)

## § 41-303. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those jurisdictions which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this chapter takes effect. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 4.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-304. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 5.)

## PART II

## NATURE OF A PARTNERSHIP

## § 41-305. Partnership defined.

(1) A partnership is an association of two or more persons to carry on as coowners a business for profit.

(2) But any association formed under any other statute of this jurisdiction, or any statute adopted by authority, other than the authority of this jurisdiction is not a partnership under this chapter, unless such association would have been a partnership in this jurisdiction prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as the statutes of the District of Columbia relating to such partnerships are inconsistent herewith. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 6.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-306. Rules for determining the existence of a partnership.

In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 41-316 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right

or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment—

- (a) as a debt by installments or otherwise,
- (b) as wages of an employee or rent to a landlord,
- (c) as an annuity to a widow or representative of a deceased partner,
- (d) as interest on a loan, though the amount of payment varies with the profits of the business,
- (e) as the consideration for the sale of the goodwill of a business or other property by installments or otherwise.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 7.)

#### EFFECTIVE DATE

See note to section 41-301.

### § 41-307. Partnership property.

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 8.)

#### EFFECTIVE DATE

See note to section 41-301.

### PART III

#### RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

### § 41-308. Partner agent of partnership as to partnership business.

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partners so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to—

- (a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) dispose of the goodwill of the business,

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) confess a judgment.

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 9.)

#### EFFECTIVE DATE

See note to section 40-301.

### § 41-309. Conveyance of real property of the partnership.

(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partners' act binds the partnership under the provisions of paragraph (1) of section 41-308, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41-308.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 41-308, unless the purchaser or his assignee is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41-308.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 10.)

#### EFFECTIVE DATE

See note to section 41-301.

### § 41-310. Partnership bound by admission of partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 11.)



**§ 41-311. Partnership charged with knowledge of or notice to partner.**

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquiring while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 12.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-312. Partnership bound by partner's wrongful act.**

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 13.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-313. Partnership bound by partner's breach of trust.**

The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 14.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-314. Nature of partner's liability.**

All partners are liable—

(a) jointly and severally for everything chargeable to the partnership under sections 41-312 and 41-313,

(b) jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 14.)

**§ 41-315. Partner by estoppel.**

(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so

giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 16.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-316. Liability of incoming partner.**

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 17.)

**PART IV****RELATIONS OF PARTNERS TO ONE ANOTHER****§ 41-317. Rules determining rights and duties of partners.**

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 18.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-318. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 19.)

## § 41-319. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 20.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-320. Partner accountable as a fiduciary.

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 21.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-321. Right to an account.

Any partner shall have the right to a formal account as to partnership affairs—

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 41-320.

(d) Whenever other circumstances render it just and reasonable. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 22.)

## PART V

## PROPERTY RIGHTS OF A PARTNER

## § 41-322. Continuation of partnership beyond fixed term.

(1) When a partnership for a fixed term or particular undertaking is continued after the termi-

nation of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 23.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-323. Extent of property rights of a partner.

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 24.)

## § 41-324. Nature of a partner's right in specific partnership property.

(1) A partner is coowner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 25.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-325. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is



personal property. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 26.)

#### § 41-326. Assignment of partner's interest.

(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 27.)

#### EFFECTIVE DATE

See note to section 41-301.

#### § 41-327. Partner's interest subject to charging order.

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 28.)

#### EFFECTIVE DATE

See note to section 41-301.

### PART VI

#### DISSOLUTION AND WINDING UP

#### § 41-328. Dissolution defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 29.)

#### § 41-329. Partnership not terminated by dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 30.)

#### EFFECTIVE DATE

See note to section 41-301.

#### § 41-330. Causes of dissolution.

Dissolution is caused: (1) Without violation of the agreement between the partners—

(a) by the termination of the definite term or particular undertaking specified in the agreement,

(b) by the express will of any partner when no definite term or particular undertaking is specified,

(c) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 41-331. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 31.)

#### EFFECTIVE DATE

See note to section 41-301.

#### § 41-331. Dissolution by decree of court.

(1) On application by or for a partner the court shall decree a dissolution whenever—

(a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) a partner becomes in any other way incapable of performing his part of the partnership contract,

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) the business of the partnership can only be carried on at a loss,

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 41-326 and 41-327—

(a) after the termination of the specified term or particular undertaking,

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 32.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-332. General effect of dissolution on authority of partner.**

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership—

(1) with respect to the partners—

(a) when the dissolution is not by the act, bankruptcy or death of a partner; or

(b) when the dissolution is by such act, bankruptcy or death of a partner, in cases where section 41-333 so requires;

(2) with respect to persons not partners, as declared in section 41-334. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 33.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-333. Right of partner to contribution from copartners after dissolution.**

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless—

(a) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 34.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-334. Power of partner to bind partnership to third persons after dissolution.**

(1) After dissolution a partner can bind the partnership except as provided in paragraph (3)—

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1) (b) shall be satisfied out of partnership assets alone when such partner has been prior to dissolution—

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution—

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority had not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1) (b) (II).

(4) Nothing in this section shall affect the liability under section 41-315 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 35.)

**EFFECTIVE DATE**

See note to section 41-301.

**§ 41-335. Effect of dissolution on partner's existing liability.**

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 36.)

**EFFECTIVE DATE**

See note to section 41-301.



## § 41-336. Right to wind up.

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: *Provided, however,* That any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 37.)

## § 41-337. Rights of partners to application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartner and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 41-335(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have—

(I) all the rights specified in paragraph (1) of this section, and

(II) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2) (a) (II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have—

(I) if the business is not continued under the provisions of paragraph (2) (b) 'all the rights of a partner under paragraph (1), subject to clause (2) (a) (II) of this section;

(II) if the business is continued under paragraph (2) (b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all

existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 38.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-338. Rights where partnership is dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (Sept. 27, 1962, 76 Stat. 645, Pub. L. 87-709, § 39.)

## EFFECTIVE DATE

See note to section 41-301.

## § 41-339. Rules for distribution.

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are—

(I) the partnership property,

(II) the contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 41-317(a), the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.



(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors.

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

(Sept. 27, 1962, 76 Stat. 646, Pub. L. 87-709, § 40.)

#### EFFECTIVE DATE

See note to section 41-301.

#### § 41-340. Liability of persons continuing the business in certain cases.

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 41-337(2) (b), either alone or with others, and without liqui-

dation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in the section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (Sept. 27, 1962, 76 Stat. 646, Pub. L. 87-709, § 41.)

#### EFFECTIVE DATE

See note to section 41-301.

#### § 41-341. Rights of retiring or estate of deceased partner when the business is continued.

When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41-340 (1), (2), (3), (5), (6), or section 41-337(2) (b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative, as against such persons or partnership, may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors, or the representative of the retired or deceased creditors of the dissolved partnership as against the separate partner, shall have priority on any claim arising under this section, as provided by section 41-340(8). (Sept. 27, 1962, 76 Stat. 647, Pub. L. 87-709, § 42.)

#### EFFECTIVE DATE

See note to section 41-301.



## § 41-342. Accrual of right to account.

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 43.)

## EFFECTIVE DATE

See note to section 41-301.

## Chapter 4.—UNIFORM LIMITED PARTNERSHIPS

## Sec.

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- 41-409. Rights, powers, and liabilities of a general partner.
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- 41-424. When certificate shall be cancelled or amended.
- 41-425. Requirements for amendment and for cancellation of certificate.
- 41-426. Parties to action.
- 41-427. Rules of construction.
- 41-428. Rules for cases not provided for in this chapter.
- 41-429. Provisions for existing limited partnerships.

## § 41-401. Limited partnership defined.

A limited partnership is a partnership formed by two or more persons under the provisions of section 41-402, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. (Sept. 28, 1962, 76 Stat. 655, Pub. L. 87-716, § 1.)

## EFFECTIVE DATE

Enacting clause preceding section 1 act Sept. 28, 1962, provides as follows: "That this act [this chapter] to provide for the formation of limited partnerships in the District of Columbia and to make uniform the law with respect thereto, shall be in effect in the District of Columbia on and after the date of the enactment of this Act." [Sept. 28, 1962.]

## POPULAR NAME

Section 27 of act Sept. 28, 1962, provides as follows: "This Act [this chapter] may be cited as the "Uniform Limited Partnership Act."

## § 41-402. Formation.

(1) Two or more persons desiring to form a limited partnership shall—

(a) sign and swear to a certificate, which shall state—

- I. the name of the partnership,
- II. the character of the business,
- III. the location of the principal place of business,

IV. the name and place of residence of each member; general and limited partners being respectively designated,

V. the term for which the partnership is to exist,

VI. the amount of cash and a description of and the agreed value of the other property contributed by each limited partner,

VII. the additional contribution, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,

VIII. the time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. the share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. the right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

XI. the right, if given, of the partners to admit additional limited partners,

XII. the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. the right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner, and

XIV. the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution;

(b) file for record the certificate in the Office of the Recorder of Deeds of the District of Columbia.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1). (Sept. 28, 1962, 76 Stat. 655, Pub. L. 87-716, § 2.)

## EFFECTIVE DATE

See note to section 41-401.

## § 41-403. Business which may be carried on.

A limited partnership may carry on any business which a partnership without limited partners may carry on. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 3.)

## § 41-404. Character of limited partner's contribution.

The contributions of a limited partner may be cash or other property, but not services. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 4.)

**§ 41-405. A name not to contain surname of limited partner—Exceptions.**

(1) The surname of a limited partner shall not appear in the partnership name, unless—

(a) It is also the surname of a general partner, or

(b) prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 5.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-406. Liability for false statements in certificate.**

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false—

(a) at the time he signed the certificate, or

(b) subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in section 41-425(3).

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 6.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-407. Limited partner not liable to creditors.**

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 7.)

**§ 41-408. Admission of additional limited partners.**

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 41-425. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 8.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-409. Rights, powers, and liabilities of a general partner.**

(1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to—

(a) do any act in contravention of the certificate,

(b) do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) confess a judgment against the partnership,

(d) possess partnership property, or assign their

rights in specific partnership property, for other than a partnership purpose,

(e) admit a person as a general partner,

(f) admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 9.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-410. Rights of a limited partner.**

(1) A limited partner shall have the same rights as a general partner to—

(a) have the partnership books kept at a principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 41-415 and 41-416. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 10.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-411. Status of a person erroneously believing himself a limited partner.**

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of this exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership: *Provided*, That on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 11.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-412. One person both general and limited partner.**

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited, partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 12.)

**EFFECTIVE DATE**

See note to section 41-401.



**§ 41-413. Loans and other business transactions with limited partner.**

(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim—

(a) receive or hold as collateral security any partnership property, or

(b) receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 13.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-414. Relation of limited partners inter se.**

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 14.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-415. Compensation of limited partner.**

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: *Provided*, That after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 15.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-416. Withdrawal or reduction of limited partner's contribution.**

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until—

(a) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) the certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution—

(a) on the dissolution of a partnership, or

(b) when the date specified in the certificate for its return has arrived, or

(c) after he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when—

(a) he rightfully but unsuccessfully demands the return of his contribution, or

(b) the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1a) and the limited partner would otherwise be entitled to the return of his contribution.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 16.)

**EFFECTIVE DATE**

See note to section 41-401.

**§ 41-417. Liability of limited partner to partnership.**

(1) A limited partner is liable to the partnership—

(a) for the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership.

(a) specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 17.)

## EFFECTIVE DATE

See note to section 41-401.

### § 41-418. Nature of limited partner's interest in partnership.

A limited partner's interest in the partnership is personal property. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 18.)

### § 41-419. Assignment of limited partner's interest.

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 41-425.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 41-406 and 41-417. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 19.)

## EFFECTIVE DATE

See note to section 41-401.

### § 41-420. Effect of retirement, death, or insanity of a general partner.

The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners—

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 20.)

### § 41-421. Death of limited partner.

(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 21.)

## EFFECTIVE DATE

See note to section 41-401.

### § 41-422. Rights of creditors of limited partner.

(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 22.)

## EFFECTIVE DATE

See note to section 41-401.

### § 41-423. Distribution of assets.

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(c) Those to limited partners in respect to the capital of their contributions.

(d) Those to general partners other than for capital and profits.

(e) Those to general partners in respect to profits.

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 23.)

## EFFECTIVE DATE

See note to section 41-401.

### § 41-424. When certificate shall be canceled or amended.

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when—

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) a person is substituted as a limited partner,

(c) an additional limited partner is admitted,

(d) a person is admitted as a general partner,

(e) a general partner retires, dies, or becomes insane, and the business is continued under section 41-420,



(f) there is a change in the character of the business of the partnership,

(g) there is a false or erroneous statement in the certificate,

(h) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 24.)

#### EFFECTIVE DATE

See note to section 41-401.

### § 41-425. Requirements for amendment and for cancellation of certificate.

(1) The writing to amend a certificate shall—

(a) conform to the requirements of section 41-402(1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the United States District Court for the District of Columbia to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the Recorder of Deeds of the District of Columbia where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the Recorder of Deeds of the District of Columbia where the certificate is recorded—

(a) a writing in accordance with the provisions of paragraph (1) or (2), or

(b) a certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87-716, § 25.)

#### EFFECTIVE DATE

See note to section 41-401.

### § 41-426. Parties to action.

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87-716, § 26.)

#### EFFECTIVE DATE

See note to section 41-401.

### § 41-427. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it.

(3) This chapter shall not be so construed as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action on proceedings begun or right accrued before this chapter takes effect. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 28.)

#### EFFECTIVE DATE

See note to section 41-401.

### § 41-428. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 29.)

#### EFFECTIVE DATE

See note to section 41-401.

### § 41-429. Provisions for existing limited partnerships.

(1) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, may become a limited partnership under this chapter by complying with the provisions of section 41-402: *Provided*, That the certificate sets forth—

(a) the amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of sections 41-101 to 41-109, 41-111 and 41-113 to 41-131, except that such partnership shall not be renewed unless so provided in the original agreement. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 30.)

#### EFFECTIVE DATE

See note to section 41-401.

## TITLE 43.—PUBLIC UTILITIES

### Chapter 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-310. Commission to prescribe forms of books and records.

#### NOTES TO DECISIONS

Accounting procedures, regulation of 1  
Arbitrary or capricious 2

1. Accounting procedures, regulations of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

§ 43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

#### NOTES TO DECISIONS

Accounting procedures, regulation of 1  
Arbitrary or capricious 2

1. Accounting procedures, regulation of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

### Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

#### NOTES TO DECISIONS

10. Tariff provisions, hearings on

Statute requiring Public Utilities Commission to permit increase in rates by a utility only upon application and after notice, hearing, and investigation did not make invalid the tariff provision, which was accepted by commission without notice, hearing, and investigation, and which limited liability of telephone company for omissions in telephone directory listings. *J. F. Bird v. The Chesapeake and Potomac Telephone Co.* (D.C. Mun. App. 1962, 185 A. 2d 917).

### Chapter 7.—ORDERS AND COURT PROCEEDINGS

§ 43-705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

#### NOTES TO DECISIONS

Persons affected 1  
Several orders 2

1. Persons affected

District Court should have found that one who filed petition to intervene in proceedings before Public Utilities Commission of District of Columbia with respect to bus and streetcar fares was transit rider and entitled to appeal to District Court from Commission's order, where he made sworn statement in proceedings before Commission that he was regular commuter on carrier's vehicles. *L. N. Bebachick & L. S. Goodman v. Public Utilities Commission etc.* (1961, 287 F. 2d 337, 109 U.S. App. D.C. 298).

Transit riders on buses and streetcars of carrier were entitled to appeal to District Court from order of Public Utilities Commission of District of Columbia raising cash fare for single trip from 20 cents to 25 cents, though order did not increase token fare of five for \$1 or 20 cents each. *Id.*

District Court should have found that person, who filed petition in proceedings in Public Utilities Commission of District of Columbia concerning bus and streetcar fares for reconsideration of order fixing fares, and who alleged therein that he was a transit rider, and who filed affidavit stating that he was occasional and casual customer and rider of buses and streetcars of carrier, was transit rider and entitled to appeal to District Court from Commission's order. *Id.*

2. Several orders

An order of Public Utilities Commission granting an increase in cash fare to be charged by transit company was not moot due to suppression of that order by subsequent order which continued in effect increased cash fare since validity of first order during time it was in effect remained in controversy, in that disposition of any excess funds which might have accumulated prior to subsequent order, by reason of invalidity of the increase, remained for decision. *L. N. Bebachick et al. v. Public Utilities Commission et al.* (1963, 318 F. 2d 187, 115 U.S. App. D.C. 216).

§ 43-706. Appeal limited to questions of law.

#### NOTES TO DECISIONS

9. Review, limitations of

Function of the Court of Appeals in reviewing the Public Utilities Commission's orders and decisions is limited to questions of law including constitutional questions and the Commission's findings of fact are conclusive unless it appears that the findings are unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).



## Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

### § 43-1520c. Commissioners to have authority to fix water rates.

(a) The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33⅓ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of section 43-1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioners are authorized, in their discretion, to increase the rates charged by the District for water and water services furnished by the District water supply system: *Provided*, That no such increase shall exceed 25 per centum of the rate in effect on January 1, 1961. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 501.)

#### AMENDMENT

1962—Section 501, act Mar. 2, 1962, amended section by inserting (a) at the beginning of the section and adding subsection (b) thereto.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 504, act Mar. 2, 1962, provided that amendments made to this section and sections 43-1606 and 43-1607 "shall become effective on the first day of the third month which begins after the date of enactment of this Act."

### § 43-1521c. Lien for water charges.

#### NOTES TO DECISIONS

Police power 1  
Retroactive lien 2

#### 1. Police power

Act of Congress governing District of Columbia water system and providing that District with continuing lien for water charges upon any land and improvements thereon to which water service has been furnished represent valid exercise of police power. *R. Friedman v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

#### 2. Retroactive lien

Statute giving District of Columbia continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished did not operate to create retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. *R. Friedman v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

## Chapter 16.—SANITARY SEWAGE WORKS

### § 43-1606. Methods of determination of sanitary sewer service charges.

#### AMENDMENT

1962—Section 502, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, amended section by striking "60 per centum" wherever same appeared in this section and substituted in lieu thereof "75 per centum".

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43-1520c.

### § 43-1607. Persons obligated to pay sanitary sewer service charges.

\* \* \* \* \*

(c) If at any time, or from time to time, the Commissioners shall change the established sanitary sewer service charge, the sanitary sewer service charge for any period beginning prior to any such change and ending thereafter shall be prorated on a monthly basis, in accordance with the established charges prevailing in the respective periods. (Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 503.)

#### AMENDMENT

1962—Section 503, act Mar. 2, 1962, added subsection (c).

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43-1520c.

## TITLE 44.—RAILROADS AND OTHER CARRIERS

§ 44-214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

Notwithstanding provisions of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes", approved January 14, 1933, and the provisions of the unification agreement incorporated therein, and notwithstanding the provisions of the Act entitled "An Act or provide for the transportation of schoolchildren in the District of Columbia at a reduced fare", approved February 25, 1931, the Public Utilities Commission of the District of Columbia shall fix the rate of fare for transportation by street railway and bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half the cash fare established from time to time by the Public Utilities Commission for regular route transportation within the District of Columbia, and shall establish rules and regulations governing the use thereof. No fares for schoolchildren shall be available to persons over eighteen years of age.

If, after giving effect to any and all motor vehicle fuel tax and real estate tax exemptions, the net operating income from mass transportation operations in the District of Columbia of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section for any twelve-month period ending August 31 is less than the rate of return established by the regulatory commission having jurisdiction in such carrier's last rate case, net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on its gross operating revenues in the District of Columbia, exclusive of any school fare subsidy, then the Washington Metropolitan Area Transit Commission shall, as soon as practicable after such August 31, certify to the Commissioners of the District of Columbia or their de-

signated agent with respect to such twelve-month period: (1) an amount which is the difference between the total of all reduced fares paid to each such carrier by schoolchildren in accordance with this section and the amount which would have been paid to each such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation; and (2) an amount which is the amount by which each such carrier's net operating income from mass transportation operations in the District of Columbia is less than such rate of return established by the appropriate regulatory commission in the carrier's last rate case, after giving effect to the aforesaid tax exemptions, exclusive of any such school fare subsidy. Upon such certification, the Board of Commissioners of the District of Columbia shall pay to each such carrier an amount equal to the amount certified pursuant to clause (1) thereof; except that in no event shall such amount exceed the amount certified pursuant to clause (2) hereof. (Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1, June 28, 1962, 76 Stat. 113, Pub. L. 87-507, § 1(2).)

### REFERENCES IN TEXT

Act Jan. 14, 1933, referred to in text, was act Jan. 14, 1933, 47 Stat. 759, ch. 10, and was superseded by this section.

Act Feb. 25, 1931, referred to in text, was act Feb. 25, 1931, 46 Stat. 1419, ch. 302, and was superseded by this section.

### AMENDMENT

1962—Act June 28, 1962, amended act Aug. 9, 1955, by adding a new section thereto designated as section 2. This new section is set out as the second paragraph to this section.

### EFFECTIVE DATE OF 1962 AMENDMENT

Section 2, act June 28, 1962, provided as follows: "The amendment made by the first section of this Act [Act June 28, 1962, set out as par. 2 of this section] shall be applicable with respect to the twelve-month period ending on August 31 next following the date of enactment of this Act [June 28, 1962], and to each twelve-month period thereafter."





## TITLE 45.—REAL PROPERTY

### Chapter 2.—INTERPRETATION OF INSTRUMENTS

#### § 45-201. Words of inheritance unnecessary.

##### NOTES TO DECISIONS

Construction .49  
Words of art .50

##### .49. Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen v. T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

##### .50. Words of art

The requirement that words of art, such as "and his heirs" or "in fee simple," or any similar phrase, be used in order to create estate in fee simple has been abolished in District of Columbia by statute providing in effect that a conveyance or device to A without anything more grants an estate in fee simple unless the intention of the parties appears to be to the contrary. *V. M. Simmons and J. V. Queen v. T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

#### § 45-203. Remainder to heirs—Rule in Shelley's case abolished.

##### NOTES TO DECISIONS

Construction .50  
Shelley's case 2

##### .50. Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen v. T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

##### 2. Shelley's case

The rule in Shelley's case has been abolished in District of Columbia by statute providing in effect that if one grants an estate to A for life, remainder to his heirs, A receives a life estate and his heirs take a fee simple upon his death. *V. M. Simmons and J. V. Queen v. T. V. Rosemond et al.* (1963, 223 F. Supp. 61). Testatrix' daughter and granddaughter took life estates and not estates in fee simple under will devising realty to daughter and granddaughter share and share alike, with granddaughter's share going to daughter in event of granddaughter's death without issue and to granddaughter's issue in event of granddaughter's death with issue, and with daughter's share descending to her children per capita. *Id.*

### Chapter 7.—RECORDER OF DEEDS

#### SUBCHAPTER I.—RECORDATION TAX ON DEEDS

Sec.

- 45-721. Definitions.
- 45-722. Exemptions—Enumeration of deeds exempt from tax.
- 45-723. Imposition of tax—Rate—Returns—Liability for tax.
- 45-724. Absence of consideration—Basis for computation of tax.
- 45-725. Investigation by commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons—Compelling attendance—Punishment for disobedience.
- 45-726. Recordation—Conditions.
- 45-727. Presumptions and burden of proof.
- 45-728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.
- 45-729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

Sec.

- 45-730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.
- 45-731. Compromise of penalties and adjustment of interest.
- 45-732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.
- 45-733. Administration of oaths.
- 45-734. Appeal—Other remedies.
- 45-735. Refunds and collection.
- 45-736. Stamps and other devices for collection of tax.
- 45-737. Promulgation of rules and regulations.
- 45-738. Abatement.
- 45-739. Elimination of fractional stamps or devices.
- 45-740. General criminal penalty—Prosecutions for nonfelonies by corporation council—Prosecutions for felonies by United States attorney.
- 45-741. Criminal penalty as to stamps—Illegal acts relating to stamps.
- 45-742. Disposition of funds.
- 45-743. Separability clause.
- 45-744. Appropriations.

#### SUBCHAPTER I.—RECORDATION TAX ON DEEDS

#### § 45-721. Definitions.

When used in this chapter, unless otherwise required by the context—

(a) The word "District" means the District of Columbia.

(b) The word "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized agents or representatives.

(c) The word "deed" means any document, instrument, or writing (other than a will and other than a lease), regardless of where made, executed, or delivered whereby any real property in the District of Columbia, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

(d) The words "real property" mean every estate or right, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District.

(e) The word "consideration", except as otherwise provided in section 45-724 of this subchapter, means the price or amount actually paid, or required to be paid, for real property including any mortgages, liens, or encumbrances thereon.

(f) The word "person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, any individual acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(g) The word "deficiency" as used in this subchapter means the amount or amounts by which the tax imposed by this subchapter as determined



by the Commissioners exceeds the amount shown as the tax upon the return of the person or persons liable for the payment thereof.

(h) The word "taxpayer" means any person required by this title to pay a tax, or file a return. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, § 301.)

#### EFFECTIVE DATE

Section 325, act Mar. 2, 1962, provided as follows: "The provisions of this title [classified to sections 45-721 to 45-744] shall take effect on the first day of the first month which begins on or after the sixtieth day after the enactment of this Act."

#### SHORT TITLE

Section 326, act Mar. 2, 1962, provided as follows: "This title [classified to sections 45-721 to 45-744] may be cited as the 'District of Columbia Real Estate Deed Recordation Tax Act'."

#### TRANSFER OF FUNCTIONS

Organization Order No. 130.—Office of Recorder of Deeds, Real Estate Deed Recordation Tax

Repealed by Order No. 63-197, Jan. 24, 1963. See Org. Ord. No. 101 in appendix to title 1.

### § 45-722. Exemptions—Enumeration of deeds exempt from tax.

The following deeds shall be exempt from the tax imposed by this chapter:

1. Deeds recorded prior to the effective date of the enactment of this chapter.

2. Deeds to property acquired by the United States of America or the District of Columbia.

3. Deeds to property acquired by an institution, organization, corporation, association, or government (other than the United States of America or the District of Columbia) entitled to exemption from real property taxation under sections 47-801a to 47-801f, which property was acquired solely for a purpose or purposes which would entitle such property to exemption under said sections 47-801a to 47-801f: *Provided*, That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

4. Deeds to property acquired by an institution, organization, corporation, or association entitled to exemption from real property taxation by special Act of Congress, which property was acquired solely for a purpose or purposes for which such special exemption was granted: *Provided*, That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

5. Deeds which secure a debt or other obligation.

6. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

7. Deeds between husband and wife, or parent and child, without actual consideration therefor.

8. Tax deeds.

9. Deeds of release of property which is security for a debt or other obligation. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, § 302.)

#### EFFECTIVE DATE

See note to section 45-721.

### § 45-723. Imposition of tax—Rate—Returns—Liability for tax.

(a) There is hereby imposed on each deed at the time it is submitted to the Commissioners for re-

cordation a tax at the rate of one-half of 1 per centum of the consideration for such deed: *Provided*, That in any case where application of the rate of tax to the consideration for a deed results in a total tax of less than \$1 the tax shall be \$1.

(b) Each such deed shall be accompanied by a return under oath in such form as the Commissioners may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed, the amount of tax payable, and such other information as the Commissioners may require.

(c) The parties to a deed which is submitted to the Commissioners for recordation shall be jointly and severally liable for payment of the taxes imposed by this section: *Provided*, That neither the United States nor the District of Columbia shall be subject to such liability.

(d) The Commissioners are authorized—

(1) to prescribe by regulation for reasonable extensions of time for the filing of the return required by subsection (b) of this section; and

(2) to waive as to any party to a deed the requirement for the filing of a return by such party whenever it shall be determined by the Commissioners that a return cannot be filed: *Provided*, That any waiver granted by the Commissioners to a party shall not, unless specifically authorized, be deemed to be a waiver as to any other party. Any waiver made pursuant to this subsection shall not affect the requirements of subsection (c) of this section.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, § 303.)

#### EFFECTIVE DATE

See note to section 45-721.

### § 45-724. Absence of consideration—Basis for commutation of tax.

Where no price or amount is paid or required to be paid for real property or where such price or amount is nominal, the consideration for the deed to such property shall, for purposes of the tax imposed by this subchapter, be construed to be the fair market value of the real property, and the tax shall be based upon such fair market value. In any such case, the return required to be filed with the deed shall contain such information as to the fair market value of the real property as the Commissioners shall require. Whenever, in the opinion of the Commissioners, a return does not contain sufficient information as to the fair market value of such real property, the Commissioners are authorized to make a determination thereof from the best information available. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, § 304.)

#### EFFECTIVE DATE

See note to section 45-721.

### § 45-725. Investigation by Commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summonses—Compelling attendance—Punishment for disobedience.

The Commissioners, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to the provisions of this subchapter or pursuant to any regulations of the Commissioners promulgated here-



under, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, are authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Commissioners shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided then, and in that event, the Commissioners may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Commissioners or any person designated by them of any such books, papers, records, or memorandums, or who shall obstruct or hinder the Commissioners or any person designated by them in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, § 305.)

#### CROSS REFERENCE

For penalty provisions see sections 45-729, 45-730(c), 45-740, 45-741.

#### EFFECTIVE DATE

See note to section 45-721.

#### § 45-726. Recordation—Conditions.

Except as otherwise provided in the subchapter, no deed shall be recorded by the Commissioners until the return required by this subchapter shall have been filed, and the tax imposed by this subchapter shall have been paid. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, § 306.)

#### EFFECTIVE DATE

See note to section 45-721.

#### § 45-727. Presumptions and burden of proof.

For the purpose of proper administration of this subchapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable and the burden shall be upon the taxpayer to show that a deed is exempt from tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, § 307.)

#### EFFECTIVE DATE

See note to section 45-721.

#### § 45-728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

(a) If a deficiency in tax is determined by the Commissioners, the person liable for the payment thereof shall be notified by registered or certified mail of said determination which shall include a statement of taxes due and given a period of not

less than thirty days after such notice is sent in which to file a protest with the Commissioners and show cause or reason why the deficiency should not be paid. If no protest is filed within such thirty-day period, the deficiency as determined by the Commissioners shall be final. If a protest is filed within said period of thirty days, opportunity for hearing thereon shall be granted by the Commissioners, and a final decision thereon shall be made as quickly as practicable and notice of such decision, together with a statement of taxes finally determined to be due, shall be sent by registered or certified mail to the person liable for the payment of the deficiency.

(b) Any deficiency in tax which has become final in accordance with the provisions of subsection (a) of this section shall, if no protest is filed, be due and payable within ten days after the expiration of the thirty-day period provided in subsection (a) of this section or, if a protest is filed, shall be due and payable within ten days after notice of the final decision of the Commissioners upon such protest is sent to the person liable for payment of the deficiency. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, § 308.)

#### EFFECTIVE DATE

See note to section 45-721.

#### § 45-729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

(a) In case of any failure to make and file a correct return as required by this subchapter within the time prescribed by this subchapter or prescribed by the Commissioners in pursuance of this subchapter, 5 per centum of the tax imposed by this subchapter shall be added to such tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file was due to reasonable cause and not due to neglect the Commissioners may in their discretion waive, in whole or in part, the addition to the tax provided by this subsection.

(b) The amount added to any tax under subsection (a) of this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of neglect.

(c) Interest upon the amount finally determined as a deficiency shall be assessed at the same time as the deficiency, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month or portion of a month, from the date prescribed for the payment of the tax to the date the deficiency is assessed.

(d) If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then



interest at the rate of one-half of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(e) If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

(g) Where a deficiency, or any interest or additional amounts assessed in connection therewith under subsection (c), (e), or (f) is not paid in full within the time prescribed by this section, there shall be collected as part of the tax interest upon the unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date when such unpaid amount was due until it is paid.

(h) The Commissioners are authorized at the request of the taxpayer to extend the time for payment by the taxpayer of the amount of the tax imposed by this subchapter, whether determined as a deficiency or otherwise, for a period not to exceed six months from the date prescribed for the payment of such tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, § 309.)

#### EFFECTIVE DATE

See note to section 45-721.

### §45-730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

(a) Whenever in the opinion of the Commissioners there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Commissioners may compromise such tax.

(b) The Commissioners are authorized to enter into a written agreement with any person relating to the liability of such person for payment of the tax imposed under this subchapter. Any such agreement which is approved by the Commissioners and the taxpayer involved, or his authorized agent or representative, shall be final and conclusive and—except upon a showing of fraud, malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded.

(c) Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any written agreement under this section or offer to enter into any such agreement, conceals from any officer or employee of the District of Columbia any material fact relating to the tax imposed by this subchapter; destroys,

mutilates, or falsifies any books, documents, or record; or makes under oath any false statements relating to the tax imposed by this subchapter shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the municipal court of the District of Columbia, in the name of the District of Columbia, on information by the Corporation Counsel of the District of Columbia or any of his assistants. (Mar. 2, 1962, 76 Stat. 14, Pub. L. 87-408, § 310.)

#### EFFECTIVE DATE

See note to section 45-721.

### §45-731. Compromise of penalties and adjustment of interest.

The Commissioners shall have the power for cause shown to compromise any penalty which may be imposed under the provisions of this subchapter. The Commissioners may adjust any interest, where, in their opinion, the facts in the case warrant such action. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, § 311.)

#### EFFECTIVE DATE

See note to section 45-721.

### §45-732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

(a) Except as otherwise provided in this section, the amount of any tax imposed by this subchapter shall be assessed within three years after the deed is recorded by the Commissioners and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) In the case of a false or fraudulent return, with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In case of a willful attempt in any manner to defeat or evade the tax imposed by this subchapter, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) In the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) Where, before the expiration of the time prescribed in this section for the assessment of the tax imposed by this subchapter, the Commissioners and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(f) The running of the period of limitations provided in this section on the making of assessments, or the collection of the tax imposed by this subchapter in any manner authorized by law, shall be suspended for any period during which the Commissioners are prohibited from making the assessment or from collecting said tax, and for ninety days thereafter: *Provided*, That in any case where a



proceeding is commenced by a taxpayer in any court in connection with the tax imposed by this subchapter, the running of the period of limitations shall be suspended for the period of the pendency of such proceeding and for ninety days after the decision of the court shall have become final or, if the proceeding shall have been dismissed or otherwise disposed of, for a period of ninety days after such dismissal or other disposition. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, § 312.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-733. Administration of oaths.

The Commissioners are authorized to administer oaths and affidavits in relation to any matter or proceeding conducted by them in the exercise of their powers and duties under this subchapter. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, § 313.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-734. Appeal—Other remedies.

(a) Any person aggrieved by any assessment of a deficiency in tax finally determined by the Commissioners under the provisions of section 45-728 may appeal to the District of Columbia Tax Court in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2411, as amended and as the same may hereinafter be amended.

(b) The remedy provided in subsection (a) of this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law but no suit by the taxpayer for the recovery of any part of the tax imposed shall be instituted or maintained in any court if the taxpayer has elected to file an appeal with respect to such tax, or any part thereof, in accordance with the provisions of subsection (a) of this section. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, § 314.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-735. Refunds and collection.

The provisions of section 47-2413, and the provisions of section 47-312 and section 47-313 shall be applicable to the tax imposed by this title. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 315.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-736. Stamps and other devices for collection of tax.

The Commissioners are authorized to prescribe by regulation such methods or devices, or both, including the use of a stamp or stamps, for the evidencing of payment, and the collection of the taxes imposed by this subchapter, as they may deem necessary and proper for the administration of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 316.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-737. Promulgation of rules and regulations.

The Commissioners are hereby authorized to prescribe such rules and regulations as they may deem

necessary to carry out the purposes of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 317.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-738. Abatement.

The Commissioners are authorized to abate the unpaid portion of any tax due under the provisions of this subchapter, or any liability in respect thereof, if the Commissioners determine under rule or regulation prescribed by them that the administration and collection costs involved would not warrant collection of the amount due. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-739. Elimination of fractional stamps or devices.

For the purpose of avoiding, in the case of any stamps or devices employed pursuant to authority of this subchapter, the issuance of stamps or the employment of devices representing fractional parts of \$1, the Commissioners are authorized, in their discretion, to limit the denominations of such stamps or devices to amounts representing \$1 or multiples of \$1, and to prescribe further that where part of the tax due is a fraction of \$1, the tax paid shall be paid to the nearest dollar. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 319.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-740. General criminal penalty—Prosecutions for nonfelonies by corporation counsel—Prosecutions for felonies by United States attorney.

Whoever violates any provision of this subchapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this subchapter, shall be subject to a fine of not more than \$1,000, or to imprisonment of not more than one year, or to both such fine and imprisonment. Prosecutions for violations of this subchapter shall be on information filed in the municipal court for the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States attorney in and for the District of Columbia, or any of his assistants. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 320.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-741. Criminal penalty as to stamps—Illegal acts relating to stamps.

(1) Any person who, with intent to defraud, alters, forges, makes, or counterfeits any stamp, or other device prescribed under authority of this subchapter for the collection or payment of any tax imposed by this subchapter, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, or other device; or



(2) Fraudulently cuts, tears, or removes from any deed, parchment, paper, instrument, writing, or article, upon which any tax is imposed by this subchapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this subchapter; or

(3) Fraudulently uses, joins, fixes, or places to, with, or upon any deed, parchment, paper, instrument, writing, or article, upon which a tax is imposed by this subchapter,

(a) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other deed, parchment, paper, instrument, writing, or article upon which any tax is imposed by this subchapter; or

(b) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(c) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) (a) Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(b) knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(c) knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any deed, parchment, paper, instrument, writing, package, or article, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than three years, or both. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, § 321.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-742. Disposition of funds.

All moneys collected under this subchapter shall be deposited in the Treasury of the United States to the credit of the general fund of the District of Columbia. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 322.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-743. Separability clause.

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid the remainder of this subchapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 323.)

## EFFECTIVE DATE

See note to section 45-721.

## § 45-744. Appropriations.

There are hereby authorized to be appropriated such amounts as may be necessary for the carrying

out of the provisions of this subchapter, including the use of stamps or other devices for evidencing payment of the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 324.)

## EFFECTIVE DATE

See note to section 45-721.

## Chapter 8.—ESTATES IN LAND

## § 45-816. Tenancies in common and joint tenancies.

## NOTES TO DECISIONS

## 2.50. Severance of joint tenancy

Under circumstances, execution of deed of trust by daughter as one joint tenant in favor of mother as the second joint tenant did not serve either to "sever" the joint tenancy or establish that a joint tenancy never existed between mother and daughter. *J. Maynard v. L. M. Sutherland* (1962, 313 F. 2d 560, 114 U.S. App. D.C. 169).

Joint tenants are free to contract with each other for the use of the common property and even to provide for exclusive use of the property by one of them. *Id.*

## Chapter 9.—LANDLORD AND TENANT

## § 45-906. Service of notice.

## NOTES TO DECISIONS

## 1. Generally

The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. *N. Custis v. S. Klein* (D.C. Mun. App. 1962, 177 A. 2d 268).

## § 45-915. Landlord's lien for rent.

## NOTES TO DECISIONS

## 7. Priority

Landlords of taxpayer had no judgment lien and were not "judgment creditors" of taxpayer on August 4 when United States recorded its federal tax lien, and federal tax lien would prevail over judgment lien of landlords, where government assessed taxpayer on May 26 for unpaid federal taxes, and on July 5 landlords began suit for unpaid rent and obtained writ of attachment, and on July 11, 1961 writ was executed by United States marshal who seized goods belonging to taxpayer, and on August 4 government's tax lien was filed, and on August 18, 1961 landlords obtained judgment in municipal court. *United States v. L. Leventhal et al.* (1963, 316 F. 2d 341, 114 U.S. App. D.C. 340).

Where landlords of taxpayer had statutory lien on date when government assessed taxpayer for unpaid federal taxes, but no steps at all were taken to assert or enforce landlords' lien before federal tax lien was filed, landlords' lien was an inchoate unperfected lien which did not have precedence over lien of government. *Id.*

Chapter 14.—REAL ESTATE AND BUSINESS  
BROKERS' LICENSES

## § 45-1401. Acting as broker or salesman without license unlawful.

## NOTES TO DECISIONS

Admission against interest .50  
Construction of chapter 1  
Evidence 1.50  
Police power 2  
Sufficiency of information 4.50

## .50. Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).



## 1. Construction of chapter

Purpose of Real Estate and Business Brokers' License Act of District of Columbia is to protect public against evil, fraudulent, and dishonest practices which sometimes occur in real estate brokerage business, and although act is in derogation of common law, it must be construed in the light of such purpose. *V. Wickersham et ano. v. T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit),

## 1.50. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

## 2. Police power

The Real Estate and Business Brokers' License Act of District of Columbia constitutes an exercise of police power for protection of public interest. *V. Wickersham et ano. v. T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

## 4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

## § 45-1402. Definitions—Exceptions.

## NOTES TO DECISIONS

Admission against interest 1.50

Evidence 1.51

Relationship of parties 3

Sufficiency of information 4.50

## 1.50. Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

## 1.51. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

## 3. Relationship of parties

Plaintiff, who did not have authority to submit, accept, or reject, offers or proposals but who did have authority to procure a prospective purchaser for property and who did find a prospective purchaser who in turn entered into a contract for purchase of land, was a "broker" within meaning of statute requiring licenses from one acting for compensation or consideration in buying or selling real estate for another and he could not recover for his services when he was not so licensed. *V. Wickersham et ano. v. T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

## 4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

## § 45-1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

## NOTES TO DECISIONS

Accrual of cause of action .50

Recovery on bond 2

## .50. Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder or first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y. v. S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

## 2. Recovery on bond

Real estate broker could not recover from surety on real estate salesman's bond of broker's sales manager who had failed to account for money received by him from broker's salesmen who had obtained the money from prospective purchasers. *E. D. Collier v. Hartford Accident & Indemnity Co.* (D.C. Mun. App. 1962, 180 A. 2d 846).

## § 45-1407. Details relating to license.

## NOTES TO DECISIONS

## 4. Relationship of parties

Under statutes requiring real estate broker to have a license and prohibiting a person, who is engaged in business or acting in capacity of real estate broker or salesman, from bringing an action for compensation for any services performed as such without proving that he is licensed, a contract for payment of compensation to an unlicensed broker or salesman for services rendered as such is not merely unenforceable but is void. *V. Wickersham et ano. v. T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

Essential feature of real estate broker's conventional employment is to procure a purchaser for property ready, able, and willing to buy at the price and on terms of the listing or at a different price and on different terms mutually agreed upon by owner and purchaser, and it is not a prerequisite to right to compensation that broker conduct negotiations between the parties after they have been brought into contact with each other through his efforts. *Id.*

## § 45-1408. Suspension or revocation of license—Causes enumerated.

## NOTES TO DECISIONS

Accrual of cause of action .50

Misrepresentation 6

Sufficiency of evidence 14

## .50. Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder of first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y. v. S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

## 6. Misrepresentation

Record on review by Municipal Court of Appeals sustained decision of Real Estate Commission suspending petitioner's license as a real estate broker on the grounds that she had made a substantial misrepresentation and had demonstrated such unworthiness to act as broker as to endanger interests of the public. *D. B. Quander v. The Real Estate Commissioners of the District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 386).



In reviewing ruling of Real Estate Commission suspending broker's license, Municipal Court of Appeals was bound to credit testimony adverse to license holder. *Id.*

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

14. Sufficiency of evidence

Evidence sustained findings of the Real Estate Commission, which suspended broker's license for 120 days, that broker violated the code by failure, within a reasonable time, to account, by demonstrating unworthiness or incompetency to act as a real estate broker, and by fraudulent or dishonest dealing. *R. A. Brawner v. The Real Estate Commission of the District of Columbia* (D.C. App. 1963, 190 A. 2d 818).

Evidence supported finding that broker, who allegedly agreed to manage apartment buildings for 5 per cent of gross rentals but charged substantial amounts over and above 5 per cent without knowledge or consent of clients, violated statutory provisions proscribing making of substantial misrepresentation or demonstration of unworthiness or incompetency to act as real estate broker but did not violate other provisions proscribing failure within reasonable time to account for or remit property of others or fraudulent or dishonest dealing. *G. F. Worthington III v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 639).

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresenta-

tion, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

§ 45-1409. Hearing before suspension—Court review—Appeal.

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A final decision or determination of the Commission denying, suspending, or revoking a license may be reviewed in the District of Columbia Court of Appeals in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 9.)

AMENDMENTS

1963—Sec. 9 of act Dec. 23, 1963, amended the section by striking out the 9th and 10th sentences in the first paragraph and the entire second paragraph and inserted in lieu thereof the matter above set out.

NOTES TO DECISIONS

3. Recovery of commissions

A broker procuring a purchaser for real property who entered into a binding contract with the vendor earned his commission and was entitled to receive it from the vendor when the transaction was abandoned by the parties when the vendor resold the property to others. *S. Blanken v. Bechtel Properties, Inc.* (1961, 194 F. Supp. 638; aff'd 299 F. 2d 928).

## TITLE 46.—SOCIAL SECURITY

### Chapter 1.—CARE OF BLIND

§§ 46-101 to 46-116. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 24.

Sections 1 to 16 of act Aug. 24, 1935, 49 Stat. 744, ch. 639, related to the care of needy blind persons. They authorized and directed the D.C. Commissioners to enforce the provisions of the sections, to make rules and regulations, defined the term, "needy blind person," prescribed the eligibility requirements for assistance, the form of the application, the amount of benefits, appeal from denial of aid, provided that blind persons receiving aid were not to solicit alms, discontinued aid to blind persons who moved from the District, denied benefits to capable persons who refused to work or who refused to submit to treatment, allowed no benefits to persons intentionally destroying their eyesight, made certain relatives liable for the support of the blind person, allowed the recoupment of benefits paid from the estate of the recipient, prescribed penalties for fraudulently obtaining aid, provided for liberal construction of the sections and included the usual implementing provisions. The subject is now covered by Title 3, chapter 2.

#### EFFECTIVE DATE

See note to section 3-201.

#### SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [46-101 to 46-116] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

### Chapter 2.—OLD-AGE ASSISTANCE

§§ 46-201 to 46-215. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 24.

Sections 1 to 15 of act Aug. 24, 1935, 49 Stat. 748, ch. 640, related to old-age assistance to needy persons. The sections defined the term "assistance", outlined the eligibility requirements of needy persons for assistance, designated the D.C. Commissioners the administrator of the program, directed them to prescribe and print the forms of application, to make rules and regulations, authorized them to determine the amount of assistance and the manner thereof, provided that old age benefits were non-assignable and not subject to levy or execution, authorized payment of reasonable funeral expenses on death of a recipient, directed investigations to be made of applications for old-age assistance, provided for periodical review of assistance payments and the making of adjustments and suspensions where necessary, prescribed penalties for fraud in procuring assistance, designated the relatives who would be liable for the support of a needy old person, authorized the recoupment of benefits paid from the estate of recipient and included the usual implementing provisions. The subject matter is now covered by Title 3, chapter 2.

#### EFFECTIVE DATE

See note to section 3-201.

#### SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid

or assistance granted under such repealed Acts [sections 46-201 to 46-215] which it now has, or which would have accrued had such Acts not been repealed shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

### § 46-201. Old-age assistance—Definitions.

#### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

### § 46-211. Liability of relatives for support—Suit to recover.

#### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

### § 46-212. Estate of recipient liable for assistance—Transfer of property to Board as security.

#### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

### Chapter 3.—UNEMPLOYMENT COMPENSATION

### § 46-301. Definitions.

\* \* \* \* \*

(b) (5) \* \* \*

(G) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious or charitable purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

\* \* \* \* \*

(v) The term "insured work" means employment for employers. (Amended, Mar. 30, 1962, 76 Stat. 46, Pub. L. 87-424, §§ 1, 2.)

#### AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (b) (5) (G) by striking out "religious, charitable, scientific, literary, or educational purposes" and inserting in lieu thereof "religious or charitable purposes" and by adding subsection (v) thereto.



## EFFECTIVE DATE OF 1962 AMENDMENTS

Section 10 of act Mar. 30, 1962, provided as follows: "The amendments made by this Act [amending sections 46-301, 46-303, 46-307, 46-309, and 46-310] shall take effect on the first day of the first calendar quarter which begins after the date of enactment of this Act" [Mar. 30, 1962].

## § 46-303. Employer contributions.

## (c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

(1) The Board shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939. Each year the Board shall credit to each of such accounts having a positive reserve on the computation date, the interest earned from the Federal Government in the following manner: Each year the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to the District's account in the unemployment trust fund in the Treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on the pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the Treasury of the United States to the account of the District, any voluntary contribution made by an employer after June 30 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. Nothing in this chapter shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

(4) (i) No employer's rate of contribution for any calendar year or part thereof shall be reduced below the standard rate unless and until his account could have been charged with benefits paid throughout the thirty-six-consecutive-calendar-month period ending on the computation date applicable to such year or part thereof: *Provided*, That for the calendar year 1963, and for each calendar year thereafter, any employer who is subject to this chapter by virtue of the amendment of section 43-301(b) (5) (G) by the Act of March 30, 1962, [Pub. L. 87-424] and who has not been subject to this chapter for a sufficient period to meet this requirement, may qualify for a rate less than the standard rate if his account could have been charged with benefit payments throughout a lesser period but, in no event, less than the twelve consecutive calendar

months ending on the computation date (as herein defined) for that calendar year.

(5) The Board shall for any uncompleted portion of the calendar year beginning with the effective date of this chapter and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Board and benefit payments disbursed through the applicable computation date. The Board shall compute rates for the second six months of 1963 for all employers first acquiring the necessary twelve months' benefit experience under section 46-303 (c) (4) (i) on the computation date June 30, 1963. Such rates shall be based upon such employer's experience in the payment of contributions and benefits charged against his account through June 30, 1963, prior to the crediting of his account with trust fund interest. All employers issued a rate for the second six months of 1963, under this subsection, shall have a computation date of September 30, 1963, for the calendar year 1964.

## (8) \* \* \*

(i) If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

(A) 2.7 per centum if such reserve is less than 0.8 per centum of his average annual payroll;

(B) 2 per centum if such reserve equals or exceeds 0.8 per centum but is less than 1.3 per centum of his average annual payroll;

(C) 1.5 per centum if such reserve equals or exceeds 1.3 per centum but is less than 1.8 per centum of his average annual payroll;

(D) 1 per centum if such reserve equals or exceeds 1.8 per centum but is less than 2.8 per centum of his average annual payroll;

(E) 0.5 per centum if such reserve equals or exceeds 2.8 per centum but is less than 3.3 per centum of his average annual payroll;

(F) 0.1 per centum if such reserve equals or exceeds 3.3 per centum of his average annual payroll.

(iv) Any employer, at any time, may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this chapter, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed, or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than thirty days



following the mailing of notice of his rate of contribution for such year, and not later than one hundred and twenty days after the commencement of such year. Such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part.

\* \* \* \* \*

(9) As used in this subsection—

\* \* \* \* \*

(b) The term "average annual pay roll", except for the purposes of paragraph (4) (iv) of this subsection, means the average of the annual pay rolls of any employer for the three consecutive twelve-month periods ending ninety days prior to the computation date: *Provided*, That for an employer whose account could have been charged with benefit payments throughout at least twelve but less than thirty-six consecutive calendar months ending on the computation date, the term "average annual pay roll" means the total amount of wages for employment paid by him during the twelve-month period ending ninety days prior to the computation date;.

\* \* \* \* \*

(As amended Mar. 30, 1962, 76 Stat. 47, Pub. L. 87-424, §§ 3, 4, 5; Sept. 27, 1962, 76 Stat. 663, Pub. L. 87-705, § 1 (a), (b), (c).)

#### AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (c) (1) to read as above set out. It also amended subsection (c) (8) (i) to read as above set out and added subsection (c) (8) (iv). For prior provisions of the amended subsections see main volume of the Code.

Section 1(a) of act Sept. 27, 1962, amended subsection (c) (4) (i) by striking out the period at the end thereof, inserting a colon and the proviso clause as above set out.

Section 1(b) of the same act amended subsection (c) (5) by adding the last three sentences beginning with the words "The Board shall compute—" and ending with "—for the calendar year 1964".

Section 1(c) of the same act amended subsection (c) (9) (b) by striking out the semicolon at the end thereof, inserting a colon and the proviso clause.

#### EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46-301.

### § 46-307. Amount and duration of benefits.

\* \* \* \* \*

(b) An individual's "weekly benefit amount" shall be an amount equal to one twenty-third (computed to the next higher multiple of \$1) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, with such other following limitations. If an individual's weekly benefit amount is less than \$8, it shall be \$8. The Director shall determine annually a maximum weekly benefit amount by computing 50 per centum of the average weekly wage paid to employees in insured work, and shall on or before January 1 of the calendar year in which it shall be effective announce by publication in at least one newspaper of general circulation in the District, the maximum weekly benefit amount so determined. Such computation shall be made by determining total wages reported as paid for insured work by employers in each twelve-month period ending

June 30, and dividing said total wages by a figure resulting from fifty-two times the average of mid-month employment reported by employers for the same period. For the period from the effective date of this Act to December 31, 1962, the maximum weekly benefit amount shall be determined and announced by the Director in accordance with the foregoing formula on the basis of wages and employment in the twelve-month period ending June 30, 1961. The maximum weekly benefit amount so determined and announced for a calendar year shall apply only to those claims filed in that year qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in said amount for a subsequent calendar year. If the maximum weekly benefit amount is not a multiple of \$1, then said maximum weekly benefit amount shall be computed to the next higher multiple of \$1.

(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than \$130 in one quarter in his base period, (2) been paid wages for employment of not less than \$276 in not less than two quarters in such period, and (3) received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages for the quarter in such period in which his wages were the highest. Notwithstanding the provisions of clause (3), any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such clause, may qualify for benefits if the differences between the amounts so required to have been received and the total amount of his wages during such period does not exceed \$70, but the amount of his weekly benefit, as computed under section 7(b), shall be reduced by \$1 if such difference does not exceed \$35 or by \$2 if such difference is more than \$35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year and paid by employers who were his base period employers in such last base period shall not be available for benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, received remuneration for personal services, whether or not such services were performed in employment as defined in this chapter, in an amount equal to at least ten times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be



prorated by weeks. No reduction shall be made under the preceding two sentences for (A) any retirement pension or annuity received by reason of disability, or (B) any amount received under title II of the Social Security Act.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to thirty-four times his weekly benefit amount or 50 percent of the wages for employment paid to such individual by employers during his base period whichever is the lesser. Such total amount of benefits, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(f) **DEPENDENT'S ALLOWANCE.**—In addition to the benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week \$1 for each dependent relative, but not more than \$3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than the established maximum benefit amount. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7, formerly § 8; June 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 48, Pub. L. 87-424, §§ 5, 6, 7.)

#### AMENDMENTS

1962—Act Mar. 30, 1962, amended subsections (b), (c), and (d) to read as above set out and also amended subsection (f) by striking out “\$30” and inserting in lieu thereof the words “the established maximum benefit amount”.

For provisions of subsections (b), (c), and (d) prior to this amendment see main volume of the Code.

#### EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46-301.

#### INTERNAL REFERENCES

“This Act” referred to in subsection (b) is act of Mar. 30, 1962. For effective date of act see note to section 46-301.

Title II of the Social Security Act referred to in subsection (c) is set out in U.S. Code, Title 42, chapter 7.

#### § 46-309. Eligibility for benefits.

(b) that he has during his base period been paid wages for employment by employers equal to those required by subsection (c) of section 46-307.

(As amended Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 8.)

#### AMENDMENT

1962—Act Mar. 30, 1962, amended clause (b) to read as above set out. Prior to amendment clause (b) read as follows: “that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column ‘C’ of the table in section 46-307(b), on the line on which in column ‘B’ his weekly benefit amount appears.”

#### EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46-301.

#### § 46-310. Disqualification for benefits.

(d) (1) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(2) Compensation shall not be denied to any otherwise eligible individual for any week during which he is attending a training or retraining course with the approval of the Board, and such individual shall be deemed to be otherwise eligible for any such week despite the provisions of section 46-309(d) and subsection (c) of this section.

(e) If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, to attend a training or retraining course when recommended by the manager of the employment office or by the Board and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

(As amended Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 9.)

#### AMENDMENTS

1962—Act Mar. 30, 1962, amended subsections (d) and (e) to read as above set out. For provisions of subsections (d) and (c) prior to this amendment see main volume of the Code.

#### EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46-301.

## TITLE 47.—TAXATION AND FISCAL AFFAIRS

### Chapter 1.—GENERAL PROVISIONS

Sec.

47-126a. Fees and fines.

47-140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

47-141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

47-142. Small sums—Exemptions from notice requirements.

47-143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

47-144. "Commissioners" defined.

#### § 47-126a. Fees and fines.

There shall be credited to the District of Columbia that proportion of the fees and fines collected by the United States District Court for the District of Columbia, including fees and fines collected by the offices of the clerk of that court, of the Register of Wills of the District of Columbia, and of the United States marshal for the District of Columbia, as the amount paid by the District of Columbia toward salaries and expenses of such court and of the offices of the United States attorney for the District of Columbia and of the United States marshal for the District of Columbia bears to the total amount of such salaries and expenses; and such proportion of the fees and fines, if any, collected by the United States Court of Appeals for the District of Columbia Circuit, including fees and fines, if any, collected by the office of the clerk of that court, as the amount paid by the District of Columbia toward the salaries and expenses of such court bears to the total amount of such salaries and expenses. (July 26, 1939, 53 Stat. 1107, ch. 367, title III; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 7.)

#### AMENDMENT

1949—Act Aug. 2, 1949, inserted the words "of the Register of Wills of the District of Columbia" after the words "including fees and fines collected by the offices of the clerk of that court," and deleted the words "On and after July 1, 1939," at the beginning of the section.

#### EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act Aug. 2, 1949, effective July 1, 1949, see section 10 of act Aug. 2, 1949, set out as a note under section 19-401.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, Title 28, § 501.

#### TRANSFER OF SECTION

This section was formerly section 330 of former Title 11.

§ 47-140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

In any case in which any money has been held in trust for, or for the account of, any person by the

government of the District of Columbia pursuant to statute or otherwise, and no communication, in writing or otherwise as indicated by a written memorandum, has been received by the government of the District of Columbia concerning such money from the person entitled thereto, for a period of not less than ten years, the Commissioners shall send notice by registered or certified mail to the last known address of the person for whom such money is being held. Such mailed notice shall contain a statement that money is being held for such person and if no written claim for the return thereof is submitted to the Commissioners within sixty days of the date such notice is mailed, any future claim therefor will, subject to the provisions of section 47-141, be forever barred. (Dec. 18, 1963, 77 Stat. 419, Pub. L. 88-211, § 1.)

§ 47-141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

(a) Not less than sixty days after the mailing of any notice pursuant to section 47-140 the Commissioners shall publish notice once each week for two successive weeks in a newspaper of general circulation in the District of Columbia. Such published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Unclaimed Money Held by the District of Columbia" and shall contain:

(1) The names and the last known addresses, if any, of the persons for whom moneys are being held (listed in alphabetical order of their surnames).

(2) A statement setting forth the substance of subsection (b) of this section.

(b) If no written claim for the return of any such money is submitted to the Commissioners by the date specified in the published notices, which date shall be not less than ninety days from the date of publication of the second notice, such moneys shall be deposited in the Treasury of the United States to the credit of the District of Columbia and all claims for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88-211, § 2.)

§ 47-142. Small sums—Exemptions from notice requirements.

In any case where any money held in trust by the government of the District of Columbia for the period of time and under the same circumstances as specified in section 47-140 is in an amount less than the cost, as estimated by the Commissioners, of giving notice as required by sections 47-140 and 47-141, such money may be deposited in the Treasury of the United States to the credit of the District of Columbia without the necessity of complying with the notice requirements of sections 47-140 and 47-141, and after such deposit all claims



for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88-211, § 3.)

**§ 47-143. Deduction of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.**

Upon the return of any money deposited with the government of the District of Columbia to the person making such deposit after notice has been given such person pursuant to sections 47-140 to 47-144, the Commissioners are authorized to deduct from such returned money the costs of mailing and publishing notices required by sections 47-140 to 47-144; and shall deposit the amount so deducted in the Treasury of the United States to the credit of the District of Columbia. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88-211, § 4.)

**§ 47-144. "Commissioners" defined.**

As used in sections 47-140 to 47-144, the word "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agent. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88-211, § 5.)

**Chapter 10.—REAL PROPERTY TAX SALES**

**§ 47-1003. Deposit required—Certificate of sale—Tax deed—Redemption.**

**NOTES TO DECISIONS**

**3. Redemption**

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator under District of Columbia statutes. *Shenandoah Corp. v. E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

**Chapter 11.—SPECIAL ASSESSMENTS**

**§ 47-1101. Protest against special assessment—Hearing—Report and exceptions—Decision.**

**NOTES TO DECISIONS**

**1.50 Jurisdiction of municipal court**

Municipal Court for District of Columbia, under its equity powers, lacked jurisdiction to entertain cause of action by property owners to cancel special assessment by District for certain paving improvements to sidewalks and alley. *J. F. Paton and M. S. Paton v. District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

**Chapter 12.—TAXATION OF PERSONAL PROPERTY**

**§ 47-1208. Personal property exempt from taxation.**

**NOTES TO DECISIONS**

**2. Private gain.**

District of Columbia code provision making exempt from taxation the personal property of benevolent and charitable institutions "not conducted for private gain" uses the quoted phrase to modify "institutions" and not "personal property," and accordingly restaurant property of religious shrine which was leased to private operator under percentage agreement, with the monies derived by the shrine therefrom going to its further development, was exempt from taxation. *District of Columbia v. The National Shrine of the Immaculate Conception, Inc.* (1963, 315 F. 2d 42, 114 U.S. App. D.C. 296).

**Chapter 15.—INCOME AND FRANCHISE TAXES**

**§ 47-1551c. General definitions.**

**NOTES TO DECISIONS**

**2. Dividends**

Under statute defining "dividend" as any distribution made by corporation to stockholders out of earnings,

profits or surplus whenever earned by corporation, unrealized appreciation in value of improved realty which was held by corporation for income and not for sale did not become a "dividend" when corporation distributed assets to stockholders upon dissolution. *District of Columbia v. B. W. Oppenheimer* (1962, 301 F. 2d 563, 112 U.S. App. D.C. 329).

**§ 47-1557b. Deductions.**

**NOTES TO DECISIONS**

**1. Depreciation method**

District of Columbia Income and Franchise Tax Act revealed congressional intent to permit allowance for depreciation based on the declining balance method. *Broadcasting Publications, Inc. v. District of Columbia; District of Columbia v. Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Taxpayer would be allowed use of declining balance method of depreciation in determining tax due under District of Columbia Income and Franchise Tax Act, in absence of regulation on such subject pursuant to such Act or showing by District that such method was unreasonable. *Id.*

**§ 47-1571a. Imposition and rate of tax.**

**NOTES TO DECISIONS**

**6.50. Sales to the United States**

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia v. Gallant Incorporated* (1962, 306 F. 2d 761, 113 U.S. App. D.C. 92).

**§ 47-1574. Definition of unincorporated business.**

**NOTES TO DECISIONS**

**1.50. Engaging in business**

Where physician devoted all his time to practice of his profession and relied upon his real estate adviser for purchase or making of first trust notes or purchase of real estate, collections were made by bank, and physician did not follow up delinquent accounts, and had no employees or office connected with his investments, physician was not engaged in "business" of lending within District of Columbia Code imposing tax on privilege of engaging in any business within District. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

In action by taxpayer against District of Columbia for recovery of franchise taxes paid on basis that he had been engaged in business of renting real estate, wherein evidence as to whether taxpayer, a practicing physician, had wholly parted with management and control of three of his properties that were rented was not conclusive, and trial court made no finding on such issue, case would be remanded for further consideration of that phase. *Id.*

Neither ownership per se nor even leasing of property by owner necessarily constitutes carrying on business of renting real estate within District of Columbia franchise tax imposed on businesses. *Id.*

**§ 47-1580. Purpose of subchapter.**

**NOTES TO DECISIONS**

**12. Regulations of Commissioners**

The 1961 amendments of District of Columbia franchise tax regulations were not retroactively applicable to determine tax liability for 1956 and hence a formula using only a sales factor must be employed under 1953 regulation so that sales principally secured, negotiated or effected in District were to be deemed District sales in determining proper method of apportioning to District that part of taxpayer's net income which was "fairly attributable" to business carried on in the District. *District of Columbia v. Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).



District of Columbia franchise tax regulations which provided that prior regulations were rescinded except for certain purposes in relation to years to which they were applicable were only regulations in effect as to tax year subsequent to promulgation of such regulations. *District of Columbia v. Gallant Incorporated*; *Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1580a. Allocation and apportionment.

##### NOTES TO DECISIONS

Apportionment formula 2  
Sales to the United States 8.50  
Tax Court's authority 10

##### 2. Apportionment formula

Circulation test is not exclusive apportionment formula, for District of Columbia income tax purposes, as to all types of publications carried on partly within and partly outside the District. *Broadcasting Publications, Inc. v. District of Columbia*; *District of Columbia v. Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Entire income of trade magazine printed and published in District of Columbia by taxpayer whose subscribers and advertisers were almost entirely outside the District, was subject to tax in District, where greater part of total business activity, including mailing of magazines to subscribers, was carried on within District, and there was no continuous physical contact outside District except for news gathering and solicitation of advertisers. *Id.*

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia v. Gallant Incorporated*; *Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

##### 8.50. Sales to the United States

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia v. Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).

##### 10. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated*; *Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1586. Duties of Assessor.

##### NOTES TO DECISIONS

Apportionment formula 1  
Tax Court's authority 2

##### 1. Apportionment formula

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia v. Gallant Incorporated*; *Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

##### 2. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to

District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated*; *Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1586f. Payment of tax.

(a) *Time of payment.*—(1) Except as provided in paragraph (2) of this subsection, the total amount of tax due as shown on the taxpayer's return is due and payable in full at the time prescribed in this article for the filing of such return.

\* \* \* \* \*

(Mar. 2, 1962, 76 Stat. 10, Pub. L. 87-408, § 201.)

##### AMENDMENTS

1962—Act Mar. 2, 1962, amended paragraph (1) of subsection (a) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

##### APPLICABLE DATE OF 1962 AMENDMENTS

Section 202 of act Mar. 2, 1962, provided that the amendment of paragraph (1) of subsection (a) "shall be applicable to the taxable years beginning after December 31, 1961".

#### § 47-1593a. Election of remedy.

##### NOTES TO DECISIONS

##### 1. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

### Chapter 16.—INHERITANCE AND ESTATE TAXES

#### § 47-1601. Imposition of tax.

##### NOTES TO DECISIONS

Jointly owned property 8.50  
Payment in lieu of support 10.50

##### 8.50. Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimney v. District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).

##### 10.50. Payment in lieu of support

A transfer in lieu of husband's obligation to support his first wife during their joint lives, or until her remarriage, was made for adequate and full consideration in money or money's worth, and if lump-sum payment made by executrix to first wife pursuant to property settlement agreement was in lieu of support obligation, it was not subject to a transfer tax. *District of Columbia v. F. C. Lewis etc.* (1961, 288 F. 2d 137, 109 U.S. App. D.C. 353).

#### § 47-1602. Tax based on market value—Appraisal.

##### NOTES TO DECISIONS

##### 2.50. Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimney v. District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).



## Chapter 19.—MOTOR FUEL TAX

## § 47-1901. Rate—Use restricted.

## CROSS REFERENCE

Provisions transferring parking funds to special account in highway fund, see note to section 40-808.

## § 47-1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

## NOTES TO DECISIONS

## 1. Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company v. W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co. v. R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

## § 47-1916. Commissioners to make necessary regulations.

## NOTES TO DECISIONS

## 1. Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company v. W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co. v. R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

## Chapter 20.—DOG TAX

## Sec.

## 47-2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

## § 47-2003. Impounding of dogs found at large.

The poundmaster of the District of Columbia shall, during the entire year, seize all dogs found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the poundmaster may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia: *Provided*, That no owner, keeper, or purchaser, shall be permitted to redeem any dog seized and impounded as aforesaid, nor shall the Poundmaster deliver any dog to an owner, keeper, or purchaser, unless such owner, keeper, or purchaser shall first satisfy the Poundmaster that he has obtained for such dog the tax tag provided for in section 47-2002, and if at such time there shall be in force a proclamation of the Commissioners requiring dogs to be vaccinated against rabies, such owner, keeper, or purchaser shall also satisfy the Poundmaster that such dog has been vaccinated against rabies in

accordance with such proclamation. (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332; July 5, 1945, 59 Stat. 409, ch. 267, § 2; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 2(1).)

## AMENDMENT

1961—Section 2(1) of act Sept. 13, 1961, struck out the following: "without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large". This makes it permissible for the poundmaster to seize all dogs running at large.

## EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

## § 47-2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

Any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (June 19, 1878, 20 Stat. 174, ch. 323, § 4; June 30, 1902, 32 Stat. 547, ch. 1332; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 2(2).)

## AMENDMENT

1961—Section 2(2) of act Sept. 13, 1961, amended the section by striking out "That any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any" and inserting in lieu thereof "Any". This eliminates provision permitting licensed dogs to run at large.

## EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept 13, 1961].

## Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

## § 47-2101. Employment agencies—License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be \$100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners. A person whose application for a license is denied, or whose license is revoked or suspended by the commissioners may obtain a review of the action of the commissioners in the District of Columbia Court of Appeals in the manner provided by sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 10.)

\* \* \* \* \*

## AMENDMENTS

1963—Section 10 of act, Dec. 23, 1963, amended the first paragraph by striking out the colon preceding the



proviso and changing it to a period and by striking out everything in the paragraph beginning with the word "proviso" and inserting in lieu thereof the matter above set out beginning with the words, "A person whose".

### Chapter 23.—GENERAL LICENSE LAW

§ 47-2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

#### NOTES TO DECISIONS

Moral character of applicant 5.50  
Operators license 6.50

#### 5.50. Moral character of applicant

Findings of Board of Revocation and Review of Hackers' Identification Cards that two applicants for licenses to drive taxicabs were not of good moral character were supported by substantial evidence. *Green, Williams, and Tymus v. Silver* (1962, 207 F. Supp. 133).

That applicant for license to drive taxicab was unable to purchase liability insurance, had violated parking regulations, and 11 years before, had had his operator's permit revoked for accumulation of traffic points did not constitute evidence as to moral fitness at time of application. *Id.*

That applicant for license to drive taxicab had been arrested in 1943 when in his early twenties, on disorderly conduct charge which government dropped was not sufficient evidence to support finding that he was not proper person to receive public vehicle operator's license in 1961. *Id.*

Board of Revocation and Review of Hackers' Identification Cards had right to consider prior arrest of applicant for public vehicle operator's license reflecting upon moral character of applicant, even though there was no trial and no conviction. *Id.*

#### 6.50. Operators license

District of Columbia Board of Commissioners had authority to delegate to Board of Revocation and Review of Hackers' Identification Cards the Commissioners' powers to grant or deny licenses to operate taxicabs and, in reviewing Board's findings, only if action of board was arbitrary or unsupported by evidence may Board's judgment be overruled. *Green, Williams, and Tymus v. Silver* (1962, 207 F. Supp. 133).

§ 47-2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

#### NOTES TO DECISIONS

#### 3. Delegation of authority

Broad delegation to Board of Appeals and Review of jurisdiction over appeals submitted by applicants for licenses, permits and certificates from actions taken by responsible officials of Department of Licenses and Inspections is not inconsistent with statutes giving Commissioners of District of Columbia broad authority to enact regulations including regulations which delegate jurisdiction over licenses. *S. Brown v. W. N. Tobriner et al.* (1963, 218 F. Supp. 754).

### Chapter 24.—DISTRICT OF COLUMBIA TAX COURT

§ 47-2402. Board of Tax Appeals—District of Columbia Tax Court.

#### NOTES TO DECISIONS

#### 50. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing

suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

§ 47-2403. Appeal from assessment—Hearing and decision.

#### NOTES TO DECISIONS

#### 13.50. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47-2406. Appeal from imposition of tax involuntarily paid—Suit.

#### NOTES TO DECISIONS

#### 3. Voluntary payment

In District of Columbia, a tax payment voluntarily made cannot be recovered. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

### Chapter 25.—MISCELLANEOUS PROVISIONS

§ 47-2501b. Additional annual payment by the United States.

\* \* \* \* \*

(a) There are hereby authorized to be appropriated, in addition to the sums appropriated under section 47-2501a, as annual payments by the United States toward defraying the expenses of the government of the District of Columbia, the sum of \$9,000,000 for each of the fiscal years 1955 and 1956, the sum of \$12,000,000 for each of the fiscal years 1957 and 1958, the sum of \$21,000,000 for each of the fiscal years 1959 through 1963, inclusive, and the sum of \$39,000,000 for the fiscal year 1964 and for each fiscal year thereafter: *Provided*, That so much of the aggregate annual payments by the United States appropriated under this article to the credit of the general fund as is in excess of \$13,000,000 for each of the fiscal years 1955 and 1956, \$16,000,000 for each of the fiscal years 1957 and 1958, and \$25,000,000 for the fiscal year 1959 and for each subsequent fiscal year through and including fiscal year 1963 shall be available for capital outlay only, and then on a cumulative total basis only to the extent of not more than 50 per centum of the cumulative total of capital outlay appropriations payable from such general fund which becomes available for expenditure on and after July 1, 1954.

\* \* \* \* \*

(As amended Aug. 27, 1963, 77 Stat. 130, Pub. L. 88-104, § 1.)

#### NOTES TO DECISIONS

#### AMENDMENTS

1963—Section 1 of act Aug. 27, 1963, amended subsection (a) as follows:

(1) Struck out "and the sum of \$21,000,000 for the fiscal year 1959 and for each fiscal year thereafter" and inserted in lieu thereof "the sum of \$21,000,000 for each of the fiscal years 1959 through 1963, inclusive, and the sum of \$39,000,000 for the fiscal year 1964 and for each fiscal year thereafter".

(2) Struck out in the proviso, "and subsequent fiscal years" and inserted in lieu thereof "and for each subsequent fiscal year through and including fiscal year 1963".



Chapter 26.—GROSS SALES TAX

§ 47-2602. Imposition of tax.

AMENDMENTS

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87-408, amended the section by striking out “2 per centum” and inserting in lieu “3 per centum” and by striking out “3 per centum” in the proviso and inserting in lieu “4 per centum”.

EFFECTIVE DATE AND REFERENCES TO SECTIONS 47-2602 AND 47-2604

Section 103, act Mar. 2, 1962, provides as follows: “The amendments made by the first two sections of this title [amending sections 47-2602, 47-2604 and 47-2702] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Mar. 2, 1962]. From and after the effective date of such amendments, all references in the District of Columbia Use Tax Act [ch. 27, title 47, D.C. Code] to sections 125 [47-2602] and 127 [47-2604] of the District of Columbia Sales Tax Act shall be deemed to be references to such sections 125 and 127 as amended by the first section of this title.”

§ 47-2604. Rate of tax.

\* \* \* \* \*

(a) On each sale, other than sales of food for human consumption off the premises where such food is sold, and other than sales or charges for

rooms, lodgings, or accommodations furnished to transients, such amounts as may be prescribed by the Board of Commissioners of the District of Columbia to carry out the purposes of this section.

\* \* \* \* \*

(c) On each sale or charge for rooms, lodgings, or accommodations, furnished to transients, 4 per centum of the sales price. (Mar. 2, 1962, 76 Stat. 10, Pub. L. 87-408, § 101(b) (c).)

AMENDMENTS

1962—Act Mar. 2, 1962, amended subsection (a) to read as above set out. For provision of subsection before this amendment see main volume of Code. Act also amended subsection (c) by striking out “3 per centum” and inserting in lieu “4 per centum”.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47-2602.

Chapter 27.—COMPENSATING-USE TAX

§ 47-2702. Imposition of tax.

AMENDMENTS

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87-408, amended section by striking out “2 per centum” and inserting in lieu “3 per centum”.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47-2602.

## TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

### Chapter 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and acts of Congress to remain in force.

#### NOTES TO DECISIONS

4. British statutes

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "stat-

ute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefor is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. *Association of Western Railways et al. v. Riss & Company, Inc.* (1963, 320 F. 2d 785, — U.S. App. D.C. —).





# Parallel Reference Tables

## Table 1.—STATUTES INCLUDED

THIS TABLE SUPPLEMENTING 1961 CODE SHOWS WHERE ACTS OF CONGRESS TO JANUARY 6, 1964, WILL BE FOUND

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1916										4	renumbered.
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VOLUME 66							511	87-238	-----	7	25-124 note.
1952							511	87-238	-----	8	25-124 note.
July 19....	790	949	-----	1	8-115.		511	87-238	-----	9	25-124 note.
VOLUME 68							513	87-242	-----	1	11-755(a).
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VOLUME 72							514	87-245	-----	1	35-535.
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1960							516	87-246	-----	4	18-211.
June 11....	196	86-502	-----	7	26-610.		517	87-246	-----	5	18-204.
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June 27....	121	87-60	-----	1	4-106.		517	87-246	-----	8	18-101 note.
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Sept. 14....	510	87-238	-----	1	25-124(c)		564	87-265	-----	10	40-503 note.
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			-----				565	87-267	-----	1	22-3402 repealed.
			-----				565	87-267	-----	1	22-3403 repealed.
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